Inter-Governmental Action Group Against Money Laundering in West Africa

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

7 May 2008

NIGERIA

Nigeria is a member of GIABA. This evaluation was conducted by GIABA and was adopted as a 4th mutual evaluation by its Plenary on 7 May 2008.

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LIST OF ABBREVIATIONS AND ACRONYMS

ABCON	Association of Bureau de Change (BDC) Operators of Nigeria
ACG	Assistant Comptroller-General
ACLs	Access Control Lists
AG	Attorney General
AML	Anti Money Laundering
ATC	Anti-Terrorism Center
AU	African Union
BDCs	Bureaux-de-change
BOFI	Banks and other Financial Institutions
BPP	Bureau for Public Procurement
BSD	Banking Supervision Department
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
CBs,	Community Banks
CCB	Code of Conduct Bureau
CCT	Code of Conduct Tribunal
CDD	Customer Due Diligence
CDF	Customs Declaration Form
CEMA	Customs and Excise Management Act
CFT	Combating of Financing of Terrorism
CISSA	Conference of Intelligence and Security Services of Africa
CIU	Central Intelligence Unit
CRMS	Credit Risk Management System
CTRs	Currency Transaction Reports
DAL	Directorate of Assets and Financial Investigation
DFIs	Development Finance Institutions
DMO	Debt Management Office
DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecution
DSS	Department of State Services
E, I & I	Enforcement, Investigation and Inspection
ECOWAS	Economic Community of West African States
E-FASS	Electronic Financial Analysis System
EFCC	Economic and Financial Crimes Commission
FATF	Financial Action Task Force
FCID	Force Criminal Intelligence Department
FC	Finance Company
FIRS	Federal Inland Revenue Service
FIs	Financial Institutions
NFIU	Nigerian Financial Intelligence Unit
FIU	Financial Intelligence Unit
FMC	Federal Ministry of Commerce

FMF	Federal Ministry of Finance
FEMMP	Foreign Exchange Monitoring and Miscellaneous Provisions
FRSC	Federal Road Safety Corp
FT	Financing of Terrorism
GDP	Gross Domestic Product
GPOs	Group Policy Objects
IC PC	Independent Corrupt Practices and other Related Offences Commission
ICAN	Institute of Chartered of Accountants of Nigeria
IFAC	International Federation of Accountants
IGP	Inspector General of Police
IIPG	Insurance Industry Policy Guidelines
IMF	International Monetary Fund
IMoLin	International Money Laundering Information Network
GIABA	Groupe intergouvernemental d'action contre le blanchiment d'argent en afrique (Inter Governmental Action Group Against Money Laundering in West Africa)
INTERPOL	International Police
IOSCO	International Organization of Securities Commission
ISQC	International Standard on Quality Control
ISA	Investment and Securities Act
JIB	Joint Intelligence Board
KPMG	Klynveld,Peat, Marwick Goerdele
KYC	Know Your Customer
KYCM	Know Your Customer Manual
LAN	Local Area Network
LEAs	Law Enforcement Agencies
LTD	Limited –Company Limited by Shares
LTD/GTE	Company Limited by Guarantee
MDG	Millennium Development Goals
MFBs	Micro Finance Banks
MFIs	Micro Finance Institutions
ML	Money Laundering
MLA	Mutual Legal Assistance
MLP	Money Laundering (Prohibitions) Act
MOJ	Ministry of Justice
MVT	Money Value Transfer
MOU	Memorandum of Understanding
NAICOM	National Insurance Commission
NAPTIP	National Agency against Trafficking in Person
NASC	Nigerian Auditing Standard Committee
NBS	National Bureau of Statistics
NCCTs	Non Cooperating Countries and Territories
NCS	Nigeria Customs Service
NDIC	Nigerian Deposit Insurance Commission
NDLEA	National Drug Law Enforcement Agency

NEEDS	National Economic Empowerment and Development Strategy
NEITI	Nigerian Extractive Industries Transparency Initiative
NEPAD	New Partnership for African Development
NGOs	Non Governmental Organizations
NHRC	National Human Rights Commission
NIA	National Intelligence Agency
NIESV	Nigerian Institute of Estate Surveyors & Valuers
NIS	Nigerian Immigration Service
NISCO	NEPAD International and Security Committee
NIPC	Nigeria Investment Promotion Commission
NPF	Nigeria Police Force
NPOs	Non Profit Organizations
NSE	Nigerian Stock Exchange
NSQC	Nigerian Standard on Quality Control
OAU	Organization for African Union
OFI	Other Financial Institutions
OPEC	Organization of Petroleum Exporting Countries
PEPs	Politically Exposed Persons
PLC	Public Limited Company
PMIs -	Primary Mortgage Institutions
PSI	Policy Support Instrument
SCUML	Specialized Control Unit on Money Laundering
SEC	Securities and Exchange Commission
SERVICOM	Service Compact with Nigerians
SFU	Special Fraud Unit
SG	Solicitor General
SRA	Supervisory Regulatory Authority
SSS	State Security Service
STRs	Suspicious Transaction Reports
TI	Transparency International
UK	United Kingdom
ULTD	Unlimited Company
UNCTAD	United Nations Commission for Trade and Development
UNCAC	United Nations Convention Against Corruption
UNSC	United Nations Security Council
US	United States
USAID	United States Agency for International Development
USD	United States Dollars
WAISEC	West African Internal Security Conference
WAPCCO	West African Police Chiefs Committee

PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Federal Republic of Nigeria was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing, 2001 of the Financial Action Task Force, and was prepared using the AML/CFT Methodology, 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by the Federal Republic of Nigeria, and information obtained by the evaluation team during its onsite visit to Nigeria from 24 September to 5 October, 2007, and subsequently. During the onsite, the evaluation team met with the officials and representatives of all relevant Nigerian government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the GIABA Secretariat, FATF members, and GIABA regional experts in criminal law, law enforcement, finance and regulatory issues. They are Dr. Abdullahi Shehu, Director General, GIABA and Ms. Juliet U. Ibekaku, Legal Expert (GIABA Secretariat); Ms. Justine Walker, Financial Services Authority, United Kingdom (financial expert); Ms. Yamam Fadl, United States Treasury Department, United States (financial expert); Mr. Ousman Sowe, Director, Banking Supervision Department, Bank of The Gambia (financial expert); Dr. Kwaku Addeah, Director, Legal Department, Bank of Ghana, (legal expert); Mr. Kande Bangura, Executive Director, Narcotics Control Agency, Sierra Leone (law enforcement expert). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Nigeria as at the date of the onsite or immediately thereafter. It describes and analyses those measures, sets out Nigeria's level of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects could be strengthened (see Table 2).

[1] As updated in June, 2006

1. GENERAL

1.1 General information on the country and its economy

Background

1. The Federal Republic of Nigeria occupies a surface landmass of about 923,768 km^2 in the Western part of Africa. The Republics of Benin, Chad, Cameroon and Niger, all French-speaking countries, surround it, whereas Nigeria is an English-speaking country. Nigeria is estimated to be the largest country in sub-Saharan Africa, both in terms of size and population. Nigeria's population is estimated at 140 million with an annual growth rate of more than 3%. On 1 January 1900, the British government proclaimed the existence of two new colonial entities, the Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria, alongside the Colony and Protectorate of Lagos. Before then, the British had amalgamated the Niger Coast and imposed this arrangement on the Lagos hinterland in the 1880s–1890s. In 1906, the colony of Lagos was merged with the Southern protectorate to form the colony and protectorate of Southern Nigeria. The final amalgamation of the Northern and Southern Protectorates in 1914 was a watershed in the history of Nigeria, because it was then that the name 'Nigeria' was given to the geographical entity we know today as Nigeria. This landmark action is given prominence in the history of Nigeria because of its political undertones, as well as its repercussions on the transformation of Nigerian society.

2. Nigeria became independent on 1 October 1960 and it is now divided into 36 states and a Federal Capital Territory (Abuja), and 774 Local Government Areas. It has three major seaports: Lagos, Warri and Port Harcourt. It also has 11 international airports located in Abuja, Lagos, Kaduna, Kano, Katsina, Sokoto, Maiduguri, Minna, Calabar, Enugu and Port Harcourt.

3. Nigeria's polity and governance had been characterized by incessant military interventions leading to political instability, disregard for the rule of law and lack of respect for fundamental human rights and freedoms, as well as lack of accountability and transparency. Out of the 47 years of existence as a sovereign nation, the landscape of Nigeria's governance has been dominated by military rule for about 32 years. Almost all the seven successful military coups were purported to stop corruption. An exception was the 1985 coup by General Ibrahim Babangida. Unfortunately, however, the military regimes that claimed to deal with corruption became even more corrupt (keynote remarks by Olusegun Obasanjo, Arewa House, Kaduna, 1994).

4. The impact of military intervention on the polity has been profound, to the extent that corruption was allowed to grow hydra-headed and now constitutes one of the major problems of Nigeria. On 29 May 1999, the military handed over power to a democratically elected government headed by Olusegun Obasanjo. The fight against

corruption has been made a top priority of the democratic government. The Obasenjo administration (1999-2007) embarked on reorganization and political reforms from within and sought the cooperation and support of other countries in the recovery of stolen funds from Nigeria. It also introduced far reaching anti-corruption measures and established structures and institutions to deal with corruption and money laundering.

Economy

5. Nigeria has been described as the economic "power house" of West Africa contributing nearly 50% of the regional GDP. Nigeria is a leading petroleum producer and exporter. It is the 8th largest producer of petroleum in the world and the 6th largest exporter. Nigeria also has one of the world's highest natural gas and petroleum reserves and is also a founding member of the Organization of Petroleum Exporting Countries (OPEC). Within the West African region, Nigeria is an active Member and contributes about 80% of the Economic Community of West African States' (ECOWAS) Fund. In 2002, Nigeria's per capita income was about one-quarter of its mid-1970s high, and lower than at independence. This situation led to massive growth of the "informal sector", which represents close to 75% of the total cash based economy today.

6. The Nigerian economy is heavily dependent on petroleum, which constitutes about 97% of its exports earnings and about 80% of total federal (collectable) revenue. Oil dependency and the allure it generated of great wealth through government contracts, spawned distortions in the economy of Nigeria. An overvalued "Naira" (Nigeria's unit of currency), decline in domestic purchasing power, the rising cost of imports, and the cost of infrastructure such as power generation fuelled consumer imports and pushed local industry to less than 30% capacity utilization. The exploitation of the oil resources and the (mis)management of oil windfalls have dominated the growth and decline of Nigeria's economy over the years, and have significantly influenced the evolution and extent of poverty.

7. The government has demonstrated its willingness to combat economic and financial crimes, including money laundering (ML) and financing of terrorism (FT) by specifically recognizing this challenge within the National Economic Empowerment and Development Strategy (NEEDS) agenda. NEEDS is Nigerian home-grown medium-term (2003-2007) strategy for poverty reduction, wealth creation, employment generation and value re-orientation. The programme rests on four cardinal strategies, one of which is governance and institutional reforms to deliver effective service, elimination of waste and inefficiency by fighting corruption, and promotion of transparency and the rule of law.

8. The strategy provides a clear vision for the fight against corruption and other economic and financial crimes through the Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices and other Related Offences Commission (ICPC) and the work of the Nigerian Extractive Industries Transparency Initiative (NEITI). The NEITI is involved in auditing the oil and gas industry to address lapses in governance and transparency within that sector. Furthermore, ongoing reforms in the public service will

deliver efficiency just as market liberalization and privatization of key public enterprises are helping to improve the public finances and quality of service.

9. Nigeria became the first African country to have fully paid her debt, estimated at about $36 billion in 2004 owed to the Paris Club. Following the exit from the Paris Club, Nigeria has also successfully exited its London Club debt by redeeming Par Bonds ($1.486 billion) and repurchasing its Promissory Notes. It has also successfully repurchased about ⅓ of its Oil Warrants. As of mid-June 2007, Nigeria's external debt stood at about 3% of GDP, most of this being multilateral debt. The Debt Management Office (DMO) is developing a debt management framework, which will guide future operations on borrowing and repayment terms and conditions. Two international rating agencies (Fitch and Standard & Poor's) have continued to support their BB- sovereign rating for Nigeria with a stable outlook.

11. Exchange rate stability and convergence have been achieved with the official and parallel market almost at par. Nigerian Central Bank estimated that inflow of foreign private capital in 2007 was over $7 billion while external reserve has gone up from $7 billion in 2003 to $ 44 billion. Nigeria's GDP was estimated at $142 billion in 2006 with per capital income of $1,050. Since May 2006, there have been stable GDP growth rate of 6% since 2004 and is expected to attain 7.6% by end of 2007. Inflation has been reduced to a single digit of 5.2% year on year as at November, 2007 from 4.6% in October according to the National Bureau of Statistics.

12. Poverty remains high and there is need to accelerate progress towards the achievement of the Millennium Development Goals (MDGs). Efforts to reverse this trend were initiated in 1999, with the return of democratically elected government. During the tenure of President Olusegun Obasanjo, radical steps were taken to stabilize the economy, repair infrastructure and to eradicate the pervasive culture of corruption in the country.

13. A new President, Umaru Yar'Adua, was sworn in on 29 May 2007. The new President has stated that he will continue the reform in the economic, social and political structures in the country, by building on the efforts of his predecessor. He has also promised to intensify anti-corruption efforts, including AML/CFT prevention and enforcement measures. He recently issued a 7-point development agenda with anti-corruption, respect for rule of law and economic reform as the major plank of his administration's development strategy.

System of government

14. Nigeria operates an executive presidential system of government modeled after that of United States, with executive powers vested on an elected President and the elected Governors of 36 States. Nigeria is a federation consisting of 3 tiers of government, namely, the federal, state and local governments. There is separation of powers and functions between the tiers. Each of the 36 states has an elected Governor and an elected State Assembly of between 24 and 40 members depending on the size of the population of each state. All elected officers have four year term tenure. The third tier

comprises of 774 Local Government Areas. There is a two –term constitutional limit on the tenure of the President and the Governor.

15. The 3 arms of government at the federal and state levels are independent of one another, but work in synergy to progress development and maintain peace and harmony. At the federal level, the Executive arm is headed by the President assisted by a Vice. The National Council of States, which comprised of the President, Vice President, all former Presidents, current and all former heads of the Legislature and the Judiciary, as well as all State Governors is the highest policy making body. The Executive Council comprised of Cabinet Ministers and it meets fortnightly to consider policy issues and approve government programmes and projects.

16. The second arm of the government is the National Assembly (Legislature). The National Assembly operates a federal bi-cameral system made up of the upper and lower chambers. The upper house – the Senate is made up of 109 elected members led by the President of the Senate and a lower House of Representatives made up of 360 members led by the Speaker of the House. The National Assembly, in addition to its main function of making laws for good governance of the country, performs oversight functions over ministries and parastatal organizations of government.

17. The third arm of the government is the Judiciary, which consists of all the Courts. It is headed by the Chief Justice of Nigeria. The judiciary is responsible for adjudication of all cases, including money laundering cases.

Good governance and measures against corruption

18. Nigeria has been perceived as the centre of criminal financial activity. Individuals and criminal organizations took advantage of the country's location, weak laws, systemic corruption, lack of enforcement, and poor economic conditions to strengthen their ability to perpetrate all manner of financial crimes at home and abroad. Nigerian criminal organizations are adept at devising new ways of subverting international and domestic law enforcement efforts and evading detection. The establishment of the Economic and Financial Crimes Commission (EFCC) along with the Independent Corrupt Practices Commission (ICPC) and the improvements in training qualified prosecutors for Nigerian courts yielded some successes in 2005 and 2006. In addition to narcotics-related money laundering, advance fee fraud is a lucrative financial crime that generates hundreds of millions of illicit dollars annually for criminals.

19. However, the gradual reform process initiated by the Obasanjo Government in the last eight years is expected to accelerate under the new Government of President Umaru Musa Yar'Adua. The new President, who was sworn in on May 29, 2007, has declared his intention to intensify efforts to resolve some of the thorny issues facing the Government, including the Niger delta conflict and the reduction of poverty in the country as well as anti-corruption efforts, including AML/CFT issues.

20. Nigeria has demonstrated a strong commitment to AML/CFT issues both within the country as well as in the region. Nigeria has the most elaborate legal framework against corruption, economic and financial crimes in the region. In 1995, the first Anti Money Laundering (AML) Act was approved and enacted. However, since the only predicate offence for ML at that point was drug trafficking, the Money Laundering (Prohibition) (MLP) Act of 2004 replaced the AML Act and corrected this anomaly. Money laundering is thus now considered a criminal offence in Nigeria, regardless of the source of funds.

21. A Due Process Office was established in the Presidency to enhance transparency public procurement and budget implementation. The oversight role of the Due Process Office has now been formally situated in the Bureau for Public Procurement (BPP), established following the passage of the 2007 Procurement Act. This will further safeguard value for money.

22. The Code of Conduct Bureau (CCB) established under Section 153 is empowered by the third and fifth schedules of the Constitution to receive declarations of assets submitted by public officers, examine the declaration, retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe. The problem, however, is that no such terms and conditions have been prescribed by the National Assembly since the enactment of this provision and the setting up of the CCB in 1989. As such, Nigerians do not have access to the assets declared by their leaders for the purpose of compelling such officers to account for their wealth.

23. The effort to get the National Assembly to enact relevant laws that enhance accountability process in government business has yielded success. The newly enacted legislation include,

- 2007 Nigeria Extractive Industry Transparency Initiative (NEITI) Act;
- 2007 Public Procurement Act;
- 2007 Federal Inland Revenue Service (FIRS) Act;
- Three 2007 Tax Reform Acts;
- 2007 Central Bank of Nigeria (CBN) Act;
- 2007 Statistics Act;
- The Fiscal Responsibility, Act, 2007

24. One of the draw-backs, however, in the fight against corruption in Nigeria is the immunity of certain public officials and the non requirement for disclosure of declared assets for public scrutiny. Section 308 of the 1999 Constitution provides that certain public officers – the President, Vice President, 36 Governors and the Deputy Governors shall not be subject to civil and criminal prosecution during their stay in office. The Constitution states that they shall not be arrested or imprisoned during their stay in office either as a result of the proceedings of any court or as a result of an order issued by the court to compel them to appear in the court.

25. Nevertheless, Nigeria has progressed immensely over the last eight years. The image of the country is getting better as a result of concerted efforts to reform the national bodies responsible for AML/CFT, and to attack the drug traffickers, Advance Fee Fraud (AFF) perpetrators and money launderers. This is bearing fruit. The public needs to regain confidence in the FIs, LE agencies and those who govern them. This will take time but is already happening in many quarters. If the key players receive the requisite and firm support they need in the coming years, additional significant progress will be achieved with regard to the on-going AML/CFT effort in Nigeria.

Legal system and hierarchy of laws

26. Nigeria operates a common law system modeled after that of the United Kingdom. However, it has a written Constitution, which is the Supreme law of the land. The criminal laws include the criminal code applicable in the southern parts of the country and the penal code, applicable in the northern parts.

27. In terms of hierarchy, the Act of National Assembly takes precedence over any other law, followed by state law, bye-laws, regulations or directives arising from an existing law. Government agencies can issue regulations, guidance or manual based on an existing law and these regulations, and guidance would only have the force of law if it refers to the original law. The power to enforce such a directive or regulation must be derived from an existing law.

The Court System

28. The powers and functions of the courts are provided under chapter seven of the 1999 Constitution. The court system is made up of superior and lower courts that are responsible for civil and criminal cases. The superior courts are the courts that have appellate jurisdictions, such as the Supreme Court, the Court of Appeal, the Sharia Courts of Appeal, the Customary Court of Appeal, the High Courts and the Federal High Courts. The lower Courts include the Magistrate Courts, Sharia Courts, and Customary Courts. A federal court, such as the Federal High Courts and the Appellate Courts have federal jurisdiction while the State Courts have jurisdiction over state matters. The Supreme Court of Nigeria has the final decision in all appeals.

29. In terms of legislative powers, the Constitution vests legislative making powers on the National Assembly. The Constitution provides for exclusive list of matters where only the National Assembly can make laws. In the concurrent list, the National Assembly and the State Assembly can make laws on the same matter, however, the Act of the National Assembly would over ride that of the state where there is a conflict. An Act of National Assembly cannot become a law until it is signed or assented to by the President of the Federal Republic of Nigeria.

30. Cases related to corruption, organized crime, economic crime, terrorist financing and terrorism are usually dealt with at the high court but can also be dealt with at the federal high court since they are in the concurrent legislative list. Only the federal high

court has the power to hear money laundering cases. Cases fall into two categories "criminal and civil". Section 36 (5) of the Constitution requires that every person who is charged with criminal offence shall be presumed innocent until he is proved guilty. Thus, criminal cases, including those of ML and TF must be proved beyond reasonable doubt.

31. Other principles of fair hearing in criminal cases which are enshrined in the Constitution include Section 36 (8). This section provides that no person shall be held guilty on account of any act or omission that did not at the time it took place, constitute such an offence and no penalty shall be imposed heavier than the penalty in force at the time the offence was committed.

32. Section 36 (9) of the Constitution protects citizens' rights against double jeopardy. It provides that any person who can show that he has been tried by any court of competent jurisdiction for a criminal offence, and either convicted or acquitted shall not be tried for that offence or for a criminal offence having the same ingredients unless a superior court orders the trial. Section 36 (6) provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law. Section 36 (12) states that: "a written law refers to the Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law".

33. The Attorney General of the Federation (AGF) and Minister of Justice is in responsible for the prosecution of criminal cases. Section 174 of the Constitution provides that the AG of the federation shall have power *"to institute, commence and undertake criminal proceedings against any person before any court of law in Nigeria in respect of any offence created under any Act of the National Assembly; to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; to discontinue at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by him or any other authority or person".* Section 174 (3) provides that the AGF may exercise this power in person or through officers of his department. In exercising this power, the AGF is expected to consider public interest, the interest of justice and the need to avoid the abuse of legal process.

34. Law enforcement agencies, such as the Police, EFCC, the ICPC, National Drug Law Enforcement Agency (NDLEA), Legal Aid Council, Human Rights Commission, and National Agency against Trafficking in Person (NAPTIP), can prosecute anti-corruption, money laundering, terrorist financing and other organized crime offences with the fiat of the AGF. In any case, the AGF does not interfere in the day to day activities of these agencies but can take over the exercise of this power when the need arises –in the interest of justice. The AG may also issue guidelines to the agencies to guide them in the exercise of the conferred powers.

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

35. Nigeria had been described as one of the most corrupt countries in the world[2]. Pervasive corruption in Nigeria constitutes a major threat and underlies most of the money laundering cases reported in recent time. In the past three years, more than 10 ex-Governors and political leaders, who were alleged to have embezzled public funds estimated at USD$250 billion have been arrested and charged to court[3]. Most of these funds are alleged to be hidden in western banks and offshore centers, while a significant amount have been laundered through the acquisition of properties, luxury cars and purchase of high net worth shares in blue chip companies. Law enforcement officials also reported that half of Nigeria's $ 40 billion annual oil revenue is stolen or wasted.

36. Evidence suggesting the complicity of some multinational companies in the bribery payment of millions of US dollars to top government officials was also revealed during the trials. Nigeria has received the support and assistance of many foreign authorities, including in Europe, the USA and UK in the investigation and recovery of stolen assets. These off-shore investigations have enhanced international cooperation in the tracing of assets and proceeds of crime that have been laundered outside Nigeria

37. With the boom in the oil and telecom sectors, and the increasing lawlessness in the Niger Delta region[4], there is heightened threat that the Niger Delta crisis is fueled by corrupt political leaders and extremists with links to terrorist organizations.

38. Illicit arms trafficking is also on the increase in the Delta region and has led to hostage taking, and kidnapping of foreign and local oil workers, whose release were secured after payment of huge ransom fees. These ransom fees are often invested in the procurement of illicit arms. While Nigeria is not a drug consuming country for narcotics, it remains a transit route and remains vulnerable as a result of its porous border and weak law enforcement institutions.

39. Nigeria was placed on the FATF NCCTs list in 2002 and on the US Financial Advisory list in 2004 as a result of the inability of the government to deal with racketeering, corruption, drug trafficking and financial crimes. However, with recent successes recorded in the prosecution and conviction of high profile criminals and political leaders - 205 convictions to date, including the setting up of the financial intelligence unit, Nigeria was de-listed from the FATF NCCTs list and the US Financial Advisory list in 2007 and was subsequently admitted into the Egmont Group of Financial Intelligence Units in 2007.

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[2] Transparency International (TI) Corruption Perception Index from 1995 to 2007.

[3] Investigations and court records revealed this during the trial of some of these officials

[4]. Nigerian oil reserves are located in the Niger Delta.

Measures aimed at dealing with money laundering and underlying predicate offences:

40. Nigeria was the first country in Africa to criminalize money laundering through its Anti-Money Laundering Decree (now Act) No. 3 of 1995, which was enforced by the National Drug Law Enforcement Agency (NDLEA) until 2003, when the Economic and Financial Crimes Commission (EFCC) was established. Under the new regime, NDLEA still has the power to enforce drug related money laundering. The criminalization of money laundering is based on the United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention), 1988 and the Transnational Organized Crime Convention (the Palermo Convention) 2000, which Nigeria has ratified.

41. These Conventions have been domesticated by the enactment of the Money Laundering Prohibition (MLP) Act, 2004, the NDLEA Act, 1989 as amended and the EFCC Act, 2004. Under the 2004 MLP Act, predicate offences cover a wide-range of criminal conducts including financial malpractices, retention of proceeds of crime, corruption, conversion or the transfer of resources derived from narcotic drugs or any illegal act or crime.

42. The EFCC Act established the Economic and Financial Crimes Commission with powers to enforce money laundering offences and any other legislation related to economic and financial crimes. The anti-money laundering (AML) legislation has now provided a robust legislative and institutional framework for anti-money laundering and combat of financing of terrorism (CFT) in Nigeria. In summary, the legislation that criminalized money laundering in Nigeria includes:

i. Money Laundering (Prohibition) Act, 2004 (MLP Act)
ii. The Economic and Financial Crimes Commission Act, 2004 (EFCC)
iii. The National Drug Law Enforcement Agency Act, (NDLEA) 1989 as amended and
iv. The Independent Corrupt Practices (and Other Related Offences) Commission, (ICPC) Act, 2000.

Terrorist financing

43. Terrorism and terrorist financing (TF) on the other hand, have not been adequately criminalized under the Nigerian legal framework. Nigeria ratified the UN Convention for the Suppression of the Financing of Terrorism (CFT convention) on 28th April 2003 and has ratified 7 out of the 13 UN Terrorism Conventions

44. Section 15 of the EFCC (Establishment) Act, 2004 is the only attempt by Nigeria to criminalize the financing of terrorism. It states that *"any person who willfully provides or collects by any means, directly or indirectly any money from any other person with intent or knowledge that the money shall be used for any act of terrorism is guilty of an offence and liable on conviction to life imprisonment"*. Terrorism is defined in Section 46

of the EFCC Act; however, there is no clear definition of what constitutes terrorist organization, terrorist funds and assets. It covers the attempt to commit terrorist acts, aiding and abetting the commission of terrorism by any person who makes funds, financial assets or economic resources or other related services available for use by any person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act. The applicable sanction for attempt to commit terrorism or the commission of a terrorist offence is imprisonment for life.

Confiscation, freezing and seizing of proceeds of crime

45. In Nigeria, the EFCC, NDLEA, and ICPC Acts provide for the confiscation of all proceeds of crime. Under section 20 of the EFCC Act "proceeds" means any property derived or obtained, directly or indirectly, through the commission of an offence. Property may be seized incidental to an arrest or search.

46. Upon arrest for money laundering, the person arrested must declare all his assets in a prescribed form as provided in Section 27 of the EFCC Act. False declaration attracts five years imprisonment upon conviction. Properties and assets of a suspect can be seized in the interim through an exparte order issued by a judge of the federal high court. There are similar provisions in Sections 18 and 19 NDLEA Act, 1989 and the ICPC Act, 2000.

47. Similarly, the EFCC through the Financial Intelligence Unit (FIU), has power under section 6 (7) of the MLP Act to freeze or block accounts associated with money laundering or other economic and financial crimes. The freezing order must be based on an order of a court. On final conviction of the accused person, all proceeds of crime including those disclosed and those not disclosed and all instrumentalities used in any manner to commit or facilitate the commission of the crime, and the assets in a foreign country, if any, would be forfeited to the Federal Government of Nigeria.

Freezing of funds used for terrorist financing

48. Under section 6(d) of the EFCC Act, the Commission has the power to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities or any other illegal act, or properties which correspond to the value of such proceeds. Properties or assets may be seized upon a search not necessarily involving an arrest. A convergence of Sections 15, 20, 28, 29 and 46 of the EFCC Act empower EFCC to freeze assets and funds associated with terrorism during the execution of a search warrant and when arresting a suspect.

49. At the moment, a draft anti- terrorism bill has been submitted to the National Assembly for consideration. The bill is comprehensive and has incorporated all the measures in the UN Security Council Resolution 1267, and 1373 including specific provisions regarding freezing, confiscation and repatriation of terrorist related funds/assets.

50. The CBN has circulated some of the names of persons suspected to be involved in terrorist financing to financial institutions and law enforcement agencies as issued from time to time by the United Nations 1267 Committee. Once identified, the account would be recommended for freezing. The powers of freezing are contained in the Banks and Other Financial Institutions (BOFI) Decree, 1991 as amended[5] (now BOFI Act, CAP B3, Laws of the Federation of Nigeria, 2004). When an account is frozen, the appropriate law enforcement agency is notified to undertake an investigation. Matters relating to terrorist financing (TF) are coordinated jointly by the NFIU, EFCC, Department of State Services (DSS), NIA, Police, NDLEA, and CBN.

[5] The BOFI Act was amended and updated in 1999 to accommodate reforms in the finance sector.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)

Overview of financial and other financial institutions

51. The financial sector in Nigeria consists of the Financial Institutions (FIs) and the other Financial Institutions (OFI). The FIs are made up of the banks, the insurance, and securities and investment industry. The OFI includes any individual body, association or group of persons; whether corporate or incorporated, which carries on the business of a discount house, finance company, money brokerage, and whose principal object include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, invest management, export finance, pension fund administration and project consultancy.

52. The deregulatory programmes introduced in Nigeria in the late 1980s led to a rapid growth in the number of both commercial and merchant banks, as well as finance houses. For example, the number of commercial banks rose from 30 in 1986 to 64 in 1997, while the number of merchant banks rose from only one in 1960 to 51 with about 147 branches in 1997. The commercial banks account for between 83.9 and 89.7% of the banking system's total assets and deposit liabilities in 1997. Very little of this is foreign-owned. In 2006, a structural reform of the banking sector was undertaken leading to the consolidation of about 90 banks into 25 with minimum capital base of $2 billion.

53. Nigeria's Stock Exchange capitalization of about $65 billion is expected to increase to $100 billion by early 2008. About 19 Nigerian companies have a market capital base of $ 1billion and above. With 20 of these companies in West Africa, Nigeria is host to 19 of those companies and 11 out of the 19 companies are Nigerian banks compared with none in 1999.

54. The main legal framework for the supervision and regulation of the financial sector in Nigeria is the Banks and Other Financial Institutions (BOFI) Act, CAP B3, 2004; The Central Bank of Nigeria Decree 1991- now Central Bank Act, 2007, after a major amendment in June 2007; the Investment and Securities Act, 1999; the National Insurance Commission Act 1997 as amended in 2003; the Nigerian Deposit Insurance CAP 102, Laws of the Federation of Nigeria (LFN), 2004; and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1999.

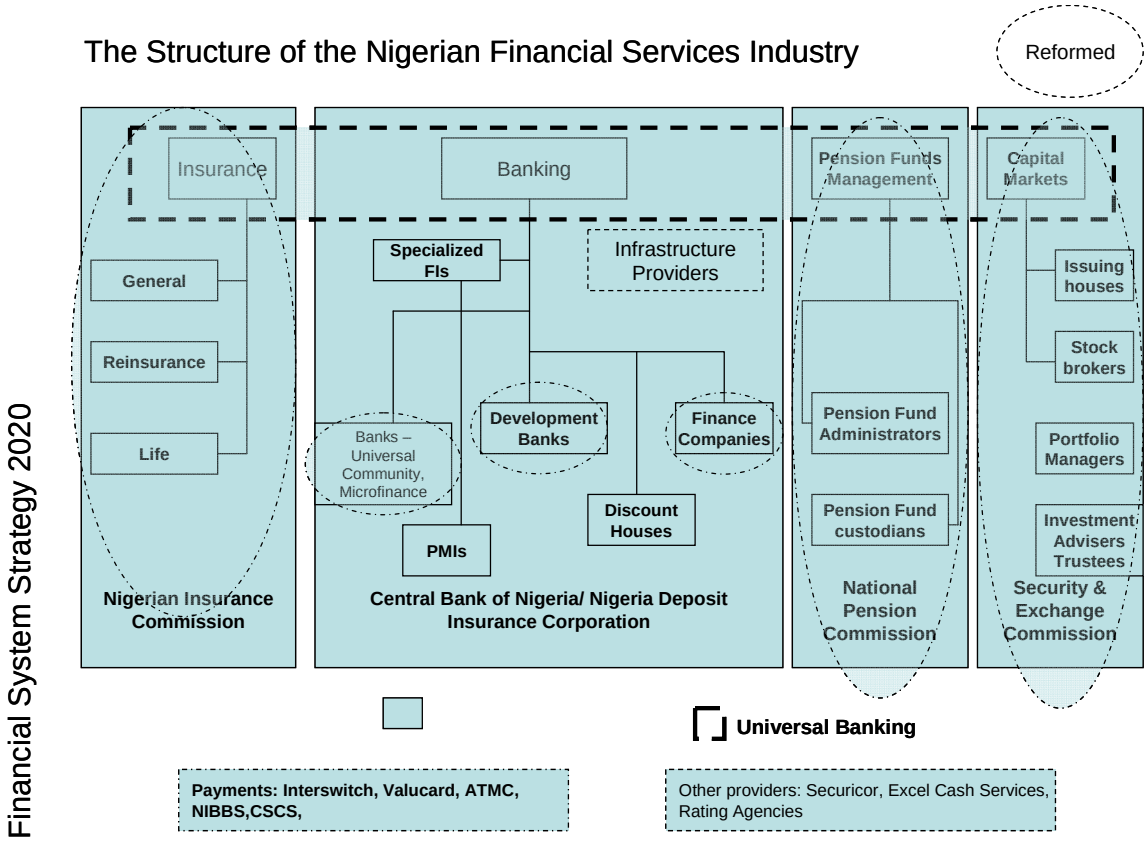
55. The apex regulatory and supervisory authorities for the FIs and OFIs are the Central Bank of Nigeria. The Securities and Exchange Commission (SEC) supervises the security and investment sector, while the National Insurance Commission (NAICOM) supervises the insurance sector. A coordinating committee – the Financial Services Regulation Coordination Committee – coordinates the supervision of financial institutions as provided in Section 43, of the CBN Act. The Committee consists of the Governor of the Central Bank, Directors of the SEC, the Nigerian Deposit Insurance Commission (NDIC), NAICOM, Registrar General of the Corporate Affairs Commission and Minister for Finance.

56. **The Central Bank:** The functions of the Central Bank as stated in the Section 2 of the CBN Act include to:

a) Issue legal tender currency in Nigeria;
b) Maintain external reserves;
c) to safe guard the international value of the legal tender currency;
d) Promote monetary stability and sound financial system in Nigeria; and
e) Act as a banker and provide economic and financial advice to the Federal Government of Nigeria.

57. The supervisory function of the CBN is structured into two departments, namely, Banking Supervision Department (BSD) and the Other Financial Institutions Department (OFID). The BSD carries out supervision of deposit money banks and discount houses, while the OFID supervises Community Banks (CBs), Micro Finance Banks (MFBs), Finance Companies (FCs), Bureaux-de-change (BDCs), Primary Mortgage Institutions (PMIs) and Development Finance Institutions (DFIs). The supervisory processes of both departments involve both onsite and offsite visits. Money laundering supervision is conducted jointly with the NFIU.

58. The CBN may also request information from any financial institution and have the power to apply disciplinary sanctions where the information provided is false. The CBN can share information with other financial institutions outside the country on the basis of mutual cooperation and to enhance the supervision and regulation of FIs. It has the power to develop and implement payment and settlement systems for the country in collaboration with the commercial banks, and determines which banks to select as a clearing house where they have met the prescribed requirements. A summary of the structure of the financial services industry in Nigeria is shown below.



Source: CBN Financial System 2020 Strategy, Abuja, 2007.

59. Before the commencement of the reform process in the banking sector in 2004, the structure of the banking industry inhibited its effective performance. The inadequacies included low capital base, large number of small banks, poor ratings of some of the banks, low capital base, and weak corporate governance, lack of compliance with regulatory requirements and reporting guidelines, huge non-performing insider related credits and over-dependence on public sector deposits and foreign exchange trading. As such, the banks lacked the capacity to sustain a competitive and financial system for the country

60. In 2004, the CBN commenced the development of strategies aimed at the reform of the banking sector. These include, (i) increase in the minimum capital for banks pegged at N25 billion Nigerian Naira; (ii) consolidation of banking institutions through mergers and acquisition; (iii) adoption of a regulatory framework, especially in the area of data gathering, and reporting; (iv) expeditious completion of the automation process for the rendition of returns; (v) establishment of a hotline and confidential internet address (Governor@cenbank.org) for all those wishing to share any confidential information with the Governor of CBN on the operations of any bank; (vi) strict enforcement of banking laws; (vii) revision and updating of relevant laws and drafting of new ones for effective operation of the banking system; and (viii) closer collaboration with the Economic and Financial Crime Commission (EFCC) for effective enforcement of financial laws.

61. The primary objective of the reform included the repositioning of the CBN and the financial system to ensure exchange rate and price stability; macroeconomic policy coordination; improvement in the payments system; financial sector diversification; regulatory reforms; and the adoption of strategies towards integration of Nigeria's financial system into the regional and global financial system.

62. Key outcomes of the reforms to date include;

- Emergence of 24 strong banks (down from 89 in 1999);
- Larger capital base (from under $3 billion to over $9 billion);
- Rating of Nigerian banks by international rating agencies (S&P; Fitch) for the first time;
- Branch network of banks increased from 3,200 in 2004 to 3, 866 in April, 2007;
- Non-performing loans down from 23% to about 7% in 2006;
- Longer tenor deposits growth;
- Over 7 banks expected to have over $1 billion capital base by end of 2007;
- 11 banks now have market capitalization ranging between $1billion and $5.3 billion; and expected to range between 2 billion and $5.3 billion in 2008;
- FDI and portfolio inflows doubling every year. 2006 estimate was $ 7billion;
- Non-oil exports grew by 24% in 2006;
- Diaspora remittances estimated to be over $ 4billion per annum;
- 16 banks in top 1000 in the world and 5 out of 10 top in Africa from none in 2003;
- Banks in Nigeria rated ***"fastest growing in Africa"*** Financial Times, December, 2006;

- Strict enforcement of financial laws and regulations; and
- Delisting of Nigeria from FATF NCCTs list and the US financial advisory list

63. The cooperation amongst the various regulatory and FI's supervisory agencies has sustained the ongoing reform in the finance sector. The ownership structure in Nigerian banks was also reviewed and expanded with government withdrawing its interest in banks. Virtually all the banks in Nigeria have been listed on the Nigerian Stock Exchange (NSE). The aggregate capitalization of banks as a share of stock market capitalization rose from 24% to 38% thereby enhancing investors' confidence and liquidity of the stock market. More Nigerian banks can now access credit lines from foreign banks while lending to the private sector rose by 31%.

Risk-based approach:

64. In recognition of the need to strengthen and enhance the supervisory process, the CBN has developed an Electronic Financial Analysis System (E-FASS) and a Credit Risk Management System (CRMS) with the intention of developing an integrated system to monitor the operations and performance of banks. The CBN is also working on a framework for the adoption of a "risk-based approach" for supervision of FIs, as opposed to the current compliance based approach. The current approach to supervision is weak and susceptible to manipulation because it is largely reactive and narrow in scope. The new approach will be applied uniformly to all supervised institutions and will also provide comprehensive guidelines for risk-assessment and prioritization of resources across all supervised entities.

65. The Central Bank has issued a post consolidation Code of Corporate Governance for compliance by financial institutions. The Code is an attempt to retain public confidence in the financial sector. It addresses issues bothering on technical competence of the board and management, including the application of "fit and proper test"; relationship amongst directors, appointment and recruitment of management and staff; integration of branch offices; insider related lending; and rendition of false returns. Financial institutions are not only required to comply with the provisions of the Code but are also expected to submit monthly reports to the regulatory authorities in Nigeria on their level of compliance with the Code.

66. The Central Bank of Nigeria (CBN) has issued a circular/directive to all Financial Institutions (FIs) to send all Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) to the Nigerian Financial Intelligence Unit (NFIU). The CBN, National Insurance Commission (NAICOM), and the Securities and Exchange Commission (SEC) have published administrative guidelines or Know Your Customers guidelines (KYC) in relation to AML/CFT issues

67. To make the payment system more efficient, a proactive framework to manage the settlement capacity of banks in Nigeria was introduced. Under this new arrangement, banks are classified into Settlement and Clearing banks on fulfillment of conditions set down in applicable regulations.

Other Financial Institutions

68. The OFIs include community banks, mortgage institutions, development finance banks, finance services companies, bureau de change. All OFIs are subject to all the existing AML/CFT laws and regulations. As part of the reform process initiated by the CBN, a Microfinance Policy, Supervisory and Regulatory framework for Nigeria was launched in December, 2005. Some of the developments in this sector include the drafting of code of ethics and professionalism for primary mortgage institutions (PMIs), and the review of regulatory guidelines for BDCs.

69. ***Community Banks:*** The Community Banks (CBs) were initially set up to provide credit banking and other financial services to designated "catchment" area or community. No community bank is permitted to engage in foreign exchange transactions, international commercial papers, international electronic funds transfer, corporate finance and cheque clearing activities. Under the CBN reform program, Community banks are now being transformed to Micro-Finance Institutions (MFIs).

70. The objective of converting the CBs to MFIs within two years (December 2005 - December 2007) is to enable them provide financial services to the economically disadvantaged, who are not served by conventional banks. The ongoing reform is also aimed at strengthening the regulatory and supervisory framework for CBs. As part of the capacity building efforts for the supervision of emerging MFIs, a training program was organized by the CBN in collaboration with USAID/PRISM and GTZ-EoPSD on "risk-based supervision" in December, 2005. As at December, 2005, the number of CBs was 536. With the ongoing process to select those who can meet the criteria set by the CBN as MFIs, the number has reduced to 407 as at November, 2007.

71. ***Primary Mortgage:*** Mortgage business in Nigeria include the granting of loans or advances to any person for building, improvement, extension, purchase, or construction of a dwelling or commercial house; acceptance of savings and deposits from the public and payment of interest, management of pension funds and estate development and trading.

72. ***Finance Companies:*** These are companies that are licensed to provide financial services for consumers and to industrial, commercial or agricultural enterprises. The services they provide include funds management, equipment leasing, hire-purchase, debts factoring, project financing, and export financing.

73. ***Development Finance Institutions:*** Some government institutions have been established to perform specific developmental functions. Currently, their involvement in the financial sector include providing funds for special government projects, aimed at achieving certain developmental objectives, including agriculture, industry, housing and transportation.

74. ***Bureau de change (BDCs):*** The BDCs in Nigeria are permitted by the CBN Act to carry out small scale foreign exchange services. BDCs are allowed to undertake spot transactions as well as remittances up to a maximum of US$4,000 per individual and $5,000 per organization. The CBN has stepped up the monitoring of BDCs and this has led to the convergence of the parallel and the inter-bank rates thus wiping off the premium in the two rates.

Securities and Exchange Commission

75**.** The Securities and Exchange Commission (SEC) is the regulatory and supervisory authority for the Nigerian capital market. The SEC regulates investments and securities in Nigeria, protects the integrity of the securities market against abuse arising from activities of the operators and prevents fraudulent and unfair trade practices in the securities industry. SEC thus regulates, supervises, controls and ensures effective administration of all the entities in the capital market.

The National Insurance Commission

76. The National Insurance Commission (NAICOM) is responsible for regulating and supervising the Nigerian insurance industry. The Commission regulates, supervises, controls, and ensures effective administration of entities in the insurance sector. NAICOM is further discussed in the subsequent section under Ministries and Committees. The table below shows the number and types of banks, financial institutions and other financial institutions operating in Nigeria

Banks and Other Financial Institutions

Reporting Entities	Total	Regulatory and Supervisory Institution
Commercial Banks	24 –post consolidation exercise	CBN
Community Banks	536 (currently undergoing transition into 407 newly licensed micro Finance Institutions) *may increase to 450 by the end of the process in December, 2007	CBN
Primary Mortgage Institutions	90	CBN
Finance Companies	110	CBN
Bureau de Change	542 (registered BDCs)	CBN
Development Finance Institutions	6	CBN
Total	**1,715**	

Investment and Securities:

Type of Institution	Total	Regulatory and Supervisory Institution
Brokers/Dealers	276	SEC
Issuing Houses	47	SEC
Capital Market Consultants (solicitors, reporting accountants, auditors)	505	SEC
Trustees, Registers, Receiving Bankers, Funds/Portfolio Managers, Underwriters, Investment advisers, Rating Agencies	162	SEC
Total	**990**	

Insurance (post –consolidation in February 2007)

Type of Institution	Total	Regulatory and Supervisory Institution
Reinsurance companies	2	NAICOM
Direct Life Insurance Companies	26	NAICOM
Direct non-life insurance companies	43	NAICOM
Insurance brokers	515	NAICOM
Loss adjusting firms	41	NAICOM
Insurance agents	3,700	NAICOM
Total	**4,327**	

Overview of Designated Non-Financial Businesses and Professions (DNFBPs)

77. The Federal Ministry of Commerce (FMC) is the competent supervisory authority for DNFBPs, which include casinos, real estate agents, dealers in precious stones, and the legal and accounting profession. The FMC's supervisory functions are conducted through the Special Control Unit on Money Laundering (SCUML). The DNFBPs were not regulated for AML/CFT measures before the enactment of the MLP Act 2004. However, the EFCC Act, 2004 Section 46 and Section 24 of the MLP Act, 2004 expanded the definition of reporting entities to include DNFBPs.

78. DNFPBs reporting entities under the Nigerian law include, casinos, dealers in jewelry, cars and luxury goods, chartered/professional accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, supermarkets, hotel and hospitality industries, estate surveyors and valuers, precious stones and metals, trust and company service providers, pool betting, lottery, non-government organizations and non-profit organizations.

79. Sections 4 &5 of the MLP Act make it mandatory for these institutions to keep a record of all their transactions, and to preserve their register of clients for 5 years. The reporting entities are also required to send weekly reports to the FMC. The FMC has produced guidelines, and KYC manuals for the sector. It is currently running a series of awareness training programs for both the regulators and operators of this emerging sector.

80. **Real Estate Agents:** Nigerian Institute of Estate Surveyors & Valuers (NIESV) is the gate keeper for registered estate agents and firms in the country. It was established by Decree 24 of 1975. While there are currently many unregistered estate agents, including lawyers who engage in the sale and purchase of estates, NIESV reported that they have registered 1,000 firms since inception. They regulate the practice of the registered firms and have developed guidelines to be applied in the conduct of estate business.

81. However, they cannot supervise the unregistered firms and there is no mechanism for monitoring or checking the activities of the unregistered agents that are largely considered as "touts". NIESV is working closely with the FMC/SCUML in developing AML/CFT guidance and training for its members. Estate administration yields substantial income to the operators as the property businesses in Nigeria remain at all time high. It is one of the sectors most vulnerable to AML/CFT. At the time of the onsite, monitoring and supervision by authorities have not increased in response to the threats in this sector.

82. **Legal Practitioners:** By virtue of Legal Practitioners Act, 1975, the Nigerian Bar Association was established as the Supervisory Regulatory Authority (SRO) for lawyers in Nigeria. The lawyers in Nigeria are trained to practice as Barristers and Solicitors without restriction as to the type of practice to engage in once the person has been called to the Bar. Following the UK tradition, Nigeria established a Law School in the early 60s. It is mandatory for any lawyer that wants to practice as an attorney as opposed to corporate legal practice or in a legal advisory capacity to spend one year in the Law School after graduation from the University education. A Nigerian lawyer would be trained for 5 to 6 years before qualifying to practice.

83. The practicing certificate from the Law School entitles him to practice in any sphere of legal practice in Nigeria. It is estimated that 46,000 lawyers have been called to the "Nigerian Bar" since its establishment. About 25,000 are in legal practice as while the rest are either in corporate institutions, international organizations or advisors to government institutions. Most lawyers also deal on estate management, sales and purchase on behalf of their clients. Nigerian lawyers have reporting obligations under the MLP Act and are now required to file suspicious transaction reports. For AML purposes, they are supervised by FMC/SCUML.

84. **Body of Benchers**: The Bar itself has a "Body of Benchers" appointed from senior members of the Bar and Bench, who have distinguished themselves in legal practice. They are empowered to examine petitions or complaints received from individuals who may have reason to believe that a member of the Bar should be investigated and punished for acts contrary to the Legal Profession Act. If there is indeed serious reason for suspicion, this body can intervene. It can issue directives to its members, who can in turn challenge the delisting by filing an appeal at the court.

85. **Accountants and Auditors:** The Nigerian Accountant is supervised by the Institute of Chartered Accountants of Nigeria (ICAN). ICAN was set up in 1965 by an Act of Parliament and is empowered to set standards and regulate the practice of

Accountancy in Nigeria. However, another parallel body – Association of Nigerian Accountants was also set up in 1992 to also regulate Accountancy practice.

86. As a member of the International Federation of Accountants (IFAC), it is part of ICAN's responsibility to adopt standards issued by the global body for use in Nigeria. ICANS in line with this obligation has issued guidelines on quality control for firms that perform auditing. The guideline is titled "Nigerian Standard on Quality Control" (NSQC). NSQC guidelines follow the basic principles set down and approved by IFAC's international Standards on Quality Control (ISQC). The Council of ICAN has established the Nigerian Auditing Standards Committee (NASC) to develop and issue guidelines on its behalf that will help to improve the degree of uniformity of auditing practices and related services. Accountants are also required to file suspicious transaction reports to the FIU or through FMC/SCUML

87. **Casinos:** Casinos are registered by FMC to carry on business of gambling. Nigeria does not have a substantive law on gambling. However, Casinos are regulated and supervised by the SCUML. Under the AML regime, casinos are required to file suspicious transactions reports and also currency transaction reports and are categorized as DNFBPs. It is not clear how many casinos are currently operational in Nigeria. SCUML reported that it is monitoring 4 registered casinos. However, there are concerns that many casinos are operating in the country without licences. This sector is vulnerable to abuse by money launderers.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

88. The fundamental commercial law governing legal persons and arrangements are contained in the Companies and Allied Matters Act (CAMA) Cap 59, LFN 1990. The Companies and Allied Matters Act established the Corporate Affairs Commission (CAC), which deals with the incorporation of companies limited by shares or guarantee, and incidental matters; the administration, and establishment of business names; and the incorporation of Trustees.

89. The Head Office of the Commission is in Abuja and there are zonal offices in all of the six geo-political zones. Particulars of legal persons can be checked through a search at the Commission's registry. CAMA requires that all companies, whether public or private, be registered with the CAC. For registration of a company limited by shares, the Commission by virtue of Section 35 of CAMA requires that the following be submitted to it, (i) Memorandum and Articles of Association; (ii) Names and Addresses of shareholders;(iii) Particulars of Directors and their consent; (iv) Notice of address of registered office of the company; (v) Statement of authorised share capital signed by a director; and (vi) a statutory declaration of compliance by a legal practitioner.

90. The Commission has power to give to any person upon payment of the requisite fee any information regarding any company or other legal arrangements registered with the Commission. In addition, Sections 31, 44 to 49 require companies to update from

time to time any information that has changed in respect of their company. The companies are also required to submit annual returns in respect of activities undertaken in a fiscal year.

91. CAMA requires that every company should keep at its registered office, a register of members with information on the names, address of each shareholder, the number of shares held by each person and the date that each person becomes or ceases to be a member. The register is open for inspection by members of the company or the public. Companies may require members to declare in what capacity they hold shares other than as beneficial owners. Also, a company must keep at its registered office a register of the directors and secretaries.

92. The requirement and procedure for registration of Business Names and Trustees are provided in Parts "B" and "C" of the CAMA. There is a registry of Business Names in each State of the Federation where searches can be conducted on the payment of the prescribed fee. Changes in the particulars at the registry for each Business Name must be registered. Incorporated Trustees and changes in name and objects have to be registered.

93. Nigerian commercial laws have a mechanism in respect of legal persons, which ensure that beneficial owners of legal businesses and entities can be identified and all necessary records and relevant information on such entities retrieved. In respect of legal arrangements such as non-profit organisations and trustees, the legal mechanism for obtaining information on beneficial owners and control are still largely inadequate. At the moment, it is not mandatory for associations and trustees to be registered. However, they would require a certificate of registration from CAC to be able to open a bank account. Under the current AML regime, banks are also required to conduct due diligence on registered trustees and beneficial owners before transacting business with them.

94. Limited liability companies incorporated in Nigeria as well as nonresident organizations doing business in Nigeria are required to register for tax. To fulfill the requirements of "know your customer", information related to the company such as, incorporation number, a copy of the certificate of incorporation, details of shareholders (ownership), directors, nature of business, registered address, business address, major customers, bankers, statutory auditors, tax consultants, date of commencement of business, branches, local and foreign associates/subsidiaries are obtained and documented. They are also required to file tax returns annually. This will help in providing a trail to track the business transactions of a company to ensure that tax is not evaded and laundered.

1.5 Overview of strategy to prevent money laundering and terrorist financing

95. The Nigerian government has expressed its commitment to reduce corruption, fraud, and money laundering through the establishment of legislative and institutional frameworks. There is a plan to establish an AML implementation committee made up of representatives of agencies involved in AML/CFT. The Committee will have the responsibility to develop AML/CFT Strategy for the country. The Nigerian AML/CFT

Strategic Plan is not yet published and remains a draft paper as it has neither been adopted by the government nor made available to the public.

Law enforcement, prosecution and other competent authorities

96. **The Nigeria Financial Intelligence Unit (NFIU):** The EFCC Act was first enacted in 2002 and amended in June 2004. The NFIU was established by Sections 1(2) & 12(2) of the EFCC Act, 2004. It is the unit responsible for the receipt, analysis and dissemination of suspicious transaction reports (STRs) and currency transaction reports (CTRs).

97. **The Economic and Financial Crimes Commission (EFCC):** The Economic and Financial Crime Commission was established in December 2002 by the Economic and Financial Crime Commission (Establishment) Act, 2002.

98. Section 6(b) and (c) of the EFCC Act empowers the Commission as the overall coordinating agency for efforts and actions pertaining to the investigation and prosecution of all offences connected with, or relating to economic and financial crimes in Nigeria. To this end, the EFCC has powers to enforce money laundering, financing of terrorism and other trans-national crimes.

99. **National Drug Law Enforcement Agency (NDLEA):** National Drug Law Enforcement Agency Act CAP 253 LFN 1990 established the NDLEA. The NDLEA Act domesticated the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances after ratification by Nigeria. In addition to its principal mandate of drug enforcement, the NDLEA also has powers to enforce money laundering offences arising from illicit traffic in narcotic drugs and psychotropic substances.

100. The NDLEA is vested with some powers similar to those of the EFCC, but **limited only** to cases relating to laundering of proceeds of illicit traffic in narcotic drugs and psychotropic substances. The Agency has a department that is responsible for recovery of assets derived from laundering the proceeds of narcotic drugs. The Agency pursues its objectives through concerted efforts within Nigeria as well as international collaboration both at bilateral and multilateral levels.

101. **The Department of State Services (DSS):** The DSS was established by the National Security Agencies Act, CAP 278 LFN 1990. Section 2(3)(a-c) provides that the responsibility of the Agency shall include the prevention and detection in Nigeria of any crime against the internal security of Nigeria; protection and preservation of all non-military classified matters covering the internal security of Nigeria; and such other responsibilities, affecting the internal security of Nigeria. The DSS is also responsible for the prevention and investigation of terrorist acts.

102. **Independent Corrupt Practices and Other Related Offences Commission (ICPC):** The Corrupt Practices and Other Related Offences Act 2000 established the ICPC. The Act prohibits and prescribes punishment for corrupt practices and related

offences. Section 6 of Act provides that it shall be the duty of the Commission where reasonable grounds exist for suspecting that any person conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of conspiracy to commit, attempt to commit or the commission of such offence and in appropriate cases to prosecute such offenders. The Commission is empowered to trace, seize, freeze, confiscate and forfeit all proceeds of corruption and related offences.

103. **The Nigeria Police Force:** The Nigeria Police was established by the Police Act as amended in 1990. The Nigeria Police has the following responsibilities: (1) prevention and detection of crime; **(2)** the apprehension of offenders; (3) the preservation of law and order; (4) the protection of life and property; and (5) the enforcement of all laws and regulations with which it is charged as may be required under the authority of the law establishing it.

104. **The Code of Conduct Bureau:** The Code of Conduct Bureau (CCB) was established under Section 153 and is empowered by the third and fifth schedules of the Constitution to receive assets declarations by public officers; examine the declaration; retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe.

105. **The Code of Conduct Tribunal:** The Code of Conduct Tribunal (CCT) serves as the court for the CCB. It adjudicates any case referred to it by the CCB. It is crucial to note that unlike the other agencies mentioned above, the Code of Conduct Bureau and Code of Conduct Tribunal derive their powers from the Constitution and thus need not refer to the Ministry of Justice in the discharge of their judicial and prosecution powers.

Ministries and Coordinating Committees:

106. **Federal Ministry of Finance (FMF):** The FMF has responsibility for economic and fiscal policies[6]. The FMF works in close collaboration with all the major players involved in AML/CFT in the country. It is responsible for the coordination of policy issues in relation to the coordination of AML strategies in Nigeria. The FMF's efforts to tightly regulate monetary and fiscal policy, together with the CBN, have led to stabilization of the value of the Naira and to the virtual elimination of the black market exchange rate. This is to the direct benefit of the country and will reduce the use of cash for transaction.

107. **The Ministry of Justice (MOJ):** The MOJ is the ministry responsible for administration of justice in the country. The Minister of Justice and the Attorney General of the Federation is the head of the Ministry. He provides legal advice to the President and all government agencies on all government business.

[6] The National Planning Commission, which is now headed by a Cabinet Minister, is responsible for economic planning ad advisory services to the Presidency.

108. With regard to general civil and criminal prosecution, the lawyers from MOJ are posted to government agencies to advise and take charge of prosecution under the guidance of the AG. The position of the Attorney General (AG) and Minister of Justice is created by virtue of Section 150 of the Constitution of Nigeria, 1999.

109. Most Nigerian law enforcement agencies derive their powers of prosecution from the inherent powers of the Minister of Justice, while still maintaining their operational independence as provided in the laws establishing them. They include the EFCC, ICPC, NDLEA, National Agency for Trafficking in Persons (NAPTIP), National Human Rights Commission (NHRC), and Police. However, some agencies do not have powers to prosecute criminal cases, including the DSS, NIA, NCS, and Nigerian Immigration Service (NIS) hence, they are required to forward reports of criminal investigations to the MOJ for further review, advice and possible prosecution.

110. The AGF is supported by professional staff, including the Solicitor General of the Federation (SGF) who is also the Permanent Secretary in the MOJ. He reports to the AGF and Minister of Justice. The MOJ also consists of specialized departments, including the Department of Public Prosecution (DPP), Department of Civil Litigation; the Department of International and Comparative Law; the Department of Citizens' Rights; and the Department of Legal Drafting. All the departments are headed by Directors who report to the Minister through the SGF. The MOJ has its headquarters in Abuja. It also has zonal offices in Lagos, Enugu, Maiduguri, Port Harcourt, Jos, and Kano.

111. **The Ministry of Interior:** The Federal Ministry of Interior has the major responsibility of ensuring and maintaining the internal security of the nation. It therefore has statutory responsibility for the formulation and implementation of policies and programmes on the following:

- Granting of Nigerian citizenship;
- Prisons;
- Immigration and visa;
- Seamen's identity card/certificate;
- Passport and travel documents;
- National flag and national coat of arms;
- Permit for foreign participation in business;
- Movement of aliens in the country;
- Repatriation of aliens;
- Relations with civil defense; and
  National identity card.

112. **Ministry of Foreign Affairs**: The Ministry of Foreign Affairs is responsible for the formulation, articulation and implementation of Nigeria's Foreign Policy and External Relations. In this connection, it is also involved in efforts and actions against terrorism. It supports the other agencies in the implementation of relevant UNSC Resolutions, including Resolutions 1267 and 1373 by disseminating such resolutions to the relevant organs of government and monitoring progress in the implementation of these Resolutions.

113. **The Nigeria Customs Service:** The Customs and Excise Management Act, CAP 84 (LFN 1990 (CEMA) established the Nigeria Customs Service (NCS). The Nigeria Customs Service is charged with the duty of controlling and managing the administration of the Customs and Excise laws. The NCS collects the revenue of Customs and Excise and accounts for same in such manner as may be provided for by the relevant legislation.

114. The Nigeria Customs Service is responsible for implementing Government fiscal policies as they relate to the import and export regime. It is also the responsibility of the NCS to examine imports and exports into and out of the country. It has powers to regulate the operations at the sea and airports and to restrict the movement of goods into and out of Nigeria by land, water-ways and by air, including examining and inspecting any ship or aircraft bringing goods into the country or out of the country.

Financial sector bodies – government

115. The Nigerian Financial Sector comprises the regulators and the regulated entities (operators). While the operators apply the provisions of the money laundering laws as a guide to their operations, the regulators, mainly government institutions, enforce compliance with the laws and regulations. The regulators also perform various examination and assessments to detect possible contraventions and impose appropriate sanctions for non-compliance. However, Nigeria institutions are yet to develop AML/CFT "threat assessments or risk based approach".

116. **The Central Bank of Nigeria (CBN):** The CBN as the apex financial regulator plays a pivotal role in the regulation and supervision of the financial sector with respect to money laundering laws. It has responsibility for the supervision of the banks and other financial institutions that make great impact on the Nigerian economy. The CBN supervisory roles are guided by the following, among others: the Banks and Other Financial Institutions Act, 1991; Monetary Policy Circulars; The Guidance Note on ML of 1995; The Know Your Customer Directive of 2001; The Know Your Customer Manual (KYCM), 2002; and The Account Opening Requirements

117. **The National Insurance Commission (NAICOM)**: is responsible for regulatory/supervisory oversight in the Nigerian Insurance Industry. The Commission regulates, supervises, controls, and ensures effective administration of regulated entities in the insurance sector. NAICOM is guided in its supervisory responsibilities by the following: the National Insurance Commission Act, 1997; The Insurance Act, 2003; The Insurance Industry Policy Guidelines, 2005; Know Your Customer Guidelines for Insurance Institutions. Institutions operating in the Nigerian Insurance sector are by the provisions of sections3, 4, 36 and 45 of the Insurance Act 2003, registered with the NAICOM.

118. **The Securities and Exchange Commission (SEC):** SEC is the apex regulatory and supervisory authority of the Nigerian capital market. The Investment and Securities Act (ISA) 1999, in section 8, grants the SEC powers to inter alia, regulate investments

and securities in Nigeria, protect the integrity of the securities market against abuses arising from activities of the operators and prevent fraudulent and unfair trade practices in the securities industry. In the performance of its regulatory and supervisory functions, SEC applies the following laws, rules and regulations, ISA, No. 45 1999; and SEC Rules and Regulations 2000 (as amended).

119. **Nigerian Corporate Affairs Commission (CAC):** CAC is responsible for registration of corporate bodies, and non-profit organizations. It maintains the record of all business registered in the country. Company records can be accessed on payment of stipulated fee to CAC.

120. **Nigerian Investment Promotion Commission (NIPC**): was established in July 1995. The NIPC is tasked with overcoming the bureaucratic and institutional barriers that had previously discouraged foreign investors from taking advantage of Nigeria's wealth of opportunities. The NIPC serves as a central investment approval agency, streamlining the activities of ministries, government departments and agencies involved with investment promotion. The NIPC helps in matters such as registration or incorporation of foreign enterprises, obtaining of expatriate quotas or provision of information about the different tax regimes for different sectors. It also serves as a catalyst for injecting the much-desired foreign capital into Nigerian economy through foreign direct investment. It encourages and promotes competition in the economy.

121. **Nigerian Deposit Insurance Commission (NDIC)**: The NDIC was set up by virtue of NDIC Act CAP 102, Laws of the Federation of Nigeria, 2004 to ensure safe and sound banking practice and prevent the incidents of failed banks. The responsibilities of the NDIC include: (i) insuring all deposit liabilities of licensed banks and such other financial institutions operating in Nigeria within the meaning of sections 20 and 26 of the NDIC Act, 2004 so as to engender confidence in the Nigerian banking system; (ii) giving assistance to depositors, in case of imminent or actual financial difficulties of banks particularly where suspension of payments is threatened; (iii) preventing lack of public confidence in the banking system; and (iv) assisting monetary authorities in the formulation and implementation of banking policy so as to ensure sound banking practice and fair competition among banks in the country.

122. **The Nigeria Stock Exchange (NSE)** was established in 1960. As of March, 2007, it has 283 listed companies with a total market capitalization of about N15 trillion ($125 billion). All listings are included in the "Nigeria Stock Exchange All Shares Index." Transactions in the stock market are guided by the following legislations, among others:

- Investment & Securities Decree Act 1999;
- Companies and Allied Matters Act, 1990;
- Nigerian Investment Promotion Commission Act, 1995;
- Foreign Exchange (Miscellaneous Provisions) Act, 1995;

123. The Exchange has an Automated Trading System. Data on listed companies' performances are published daily. In order to encourage foreign investment in Nigeria,

the government has abolished the legislation[7] preventing the flow of foreign capital into the country. This has allowed foreign brokers to enlist as dealers on the Nigerian Stock Exchange. Investors from any nationality are allowed to invest in the Stock Exchange. Nigerian companies are also allowed multiple and cross border listings on foreign markets.

124. **National Bureau of Statistics (NBS):** NBS was set up following the enactment of the 2007 Statistics Act to assist government in developing data on national development and macroeconomic indices.

125. **Federal Inland Revenue Service (FIRS):** The FIRS is responsible for tax policies and implementation in Nigeria. The Act establishing it was recently revised and a new 2007 FIRS Act has been enacted to give it more autonomy. Four 2007 Tax Reform Acts have also being passed for different sectors. These Acts are to be implemented by FIRS.

126. **Bureau for Public Procurement (BPP):** This office is responsible for ensuring transparency and due process in the procurement across federal agencies. It was set up by the 2007 Procurement Act. .

Financial sector bodies and associations:

127. **The Bankers' Committee:** The Committee is chaired by the Governor of the Central Bank of Nigeria and is made up of all the Chief Executives of Banks in Nigeria. The Committee meets once a month to review progress in the implementation of FIs policies and to address any emerging problem.

128. **Institute of Chartered Accountants of Nigeria:** ICAN is statutorily empowered to set standards and regulate the practice of Accountancy in Nigeria. However, another parallel body – Association of Nigerian Accountants was also set up in 1998 to also regulate Accountancy practice.

DNFBP and other matters:

129. **The Estate Agents & Surveyors:** Nigerian Institute of Estate Surveyors & Valuers (NIESV) is the gate keeper for registered agents and firms in the country. NIESV reported that they have registered 1,000 firms. They regulate the practice of the registered firms and have developed guidelines to be applied in the conduct of estate management. NIESV is working closely with the SCUML in developing AML/CFT guidance and training for its members. Estate administration yields substantial income to the operators as the property businesses in Nigeria remain at all time high. It is one of the sectors most

[7] Following the deregulation of the capital market in 1993 and the repeal of the Exchange Control Act, 1962 and the Nigerian Enterprise Promotion Act, 1989, foreigners can now participate in the Nigerian market both as operators and investors.

vulnerable to AML/CFT and monitoring and supervision by authorities have not increased in response to the threats in this sector.

130. **Nigerian Bar Association:** The Nigerian Bar Association was established as the Supervisory Regulatory Authority (SRO) for lawyers in Nigeria. The lawyers in Nigeria are trained to practice as Barristers and Solicitors without restriction as to the type of practice to engage in once the person has been called to the Bar. Following the UK tradition, Nigeria established a Law School in the early 60s. About 46,000 (90%) of Nigerian lawyers have been called to the "Nigeria Bar" since its establishment. About 25,000 are in legal practice.

131. **Association of Capital Market Solicitors**: These are solicitors who are registered with the SEC. They were screened after going through an interview to determine their knowledge of the Securities sector. They verify and authenticate documents associated with the sale and purchase of shares in the capital market.

132. **Zero Corruption Coalition**: This is a group of non-governmental organizations whose mandate is to promote transparency and accountability in the public and private sector. It has more than 100 members, who are active in the monitoring of anti-corruption agencies and global transparency initiatives.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 *Description and Analysis*

The Money Laundering (Prohibition) Act, 2004

133. Nigeria sought to criminalize money laundering by first signing and ratifying relevant United Nations Conventions. The commitment to combat various facets of the phenomenon was enhanced by the enactment of four key national legislation. Nigeria signed the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 28 February, 1989 and ratified same on 3 October, 1989. Nigeria also signed the UN Convention against Transnational Organized Crime (Palermo Convention) on 13 December 2000 and ratified it on 29 March, 2001. Nigeria has also ratified the UN Convention against Corruption in 2003. A summary of the key legislation enacted for the combat of money laundering and terrorist financing and related offences in order to implement the relevant international Conventions include:

- Money Laundering (Prohibition) Act, 2004 (MLPA)
- The Economic and Financial Crimes Commission Act, 2004 (EFCC Act)
- The National Drug Law Enforcement Act, 1989 (NDLEA) Act and
- The Independent Corrupt Practices (and other Related Offences) Commission Act, 2002 (ICPC Act).

134. The MLP Act and the EFCC Act provide the core statutory provisions on anti-money laundering in Nigeria. To appreciate the legal framework for money laundering in Nigeria, the MLP Act and the EFCC Act should be read as one piece of legislation because the Nigerian Financial Intelligence Unit which implements the MLP Act is a department of the EFCC. In other words the NFIU owes its legal existence to the EFCC Act. All the statutes are complemented by a range of regulations, circulars and guidelines issued by the respective financial supervisory authorities.

135. Nigeria's efforts at formulating an anti-money laundering regime dates back to 1989 when it enacted the NDLEA Act on 29th December 1989, barely three months after ratifying the Vienna Convention. In 1995, Nigeria passed the Money Laundering Act No. 3 of 1995, to criminalize money laundering – the first to do so in Africa. This law was, however, limited in scope as it covered money laundering offences related only to proceeds of drug trafficking. Thus, it was amended in 2004 to meet the requisite

international standards, including provision for the establishment of a financial intelligence unit.

Criminalization of Money Laundering

136. Physical and Material Elements of the Offence: Section 14 of the MLP Act criminalizes money laundering in the following words:

14. (1) "Any person who converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substances or any other crimes or illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drug or psychotropic substances or any other crime or illegal act to evade the illegal consequences of his action; or collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources property or right thereto derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act, commits an offence under this section I and is liable on conviction to a term of not less than 2 years or more than 3 years…".

14 (2) "A person who commits an offence under subsection 1 of this section, shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or place".

137. This section creates the offence of money laundering, and specifies its elements, which include origin, ownership, conversion, transfer, concealment, disguising, properties, intent, collaboration and sanction. It does not however, specify the type of offences, apart from mentioning "illicit traffic in drug or psychotropic substances or any other crime or illegal act." The reference to "any other crime or illegal act" is not the same as "all serious offences" as envisaged by the Conventions and the FATF Recommendations and appear to be too broad. In addition, the authorities were not able to provide legislation that criminalized all "illegal acts" thus making it impossible for the Assessors to determine the level of criminalization of predicate offences anticipated under the Act.

138. The Nigerian authorities conceded that there is need to review Section 14 of the MLP Act and to include the catalogue of relevant predicate offences in the Act. It must however be pointed out that the categories of economic and financial crimes under section 46 of the EFCC Act contains most of the "designated categories of offences" listed in the FATF Recommendation 1, but some of them have not been expressly legislated under Nigerian law.

Acquisition, Use or Possession of Criminal Property

139. This is covered under Section 18 (a) (b) (c) and (d) of the EFCC Act. Intent is required to prove that the person had a prior knowledge that the properties in his possession are proceeds of crime. Section 18 (2) provides that a person convicted for acquisition, use and possession of criminal property shall be liable on conviction to a maximum term of 3 years.

The Laundered Property

140. By virtue of S.14 (1) (a) of the MLP Act 2004, the offence of money laundering also encompasses any type of property which directly or indirectly represents proceeds of illicit activity, notwithstanding its value. From the text of section 14 (1), property refers to not only cash but also any form of property that has been established to be the proceeds of crime. Proceeds of crime thus cover the proceeds from illicit traffic in narcotic drugs, any other crimes or illegal activity and include any property that is acquired and traceable to proceeds of illegal activity. The Act however does not define "illegal act". The Assessors observed that the Act does not provide any definition section and thus many terms used in the Act need to be further clarified.

Proving Property is the Proceeds of Crime

141. The Nigerian authorities indicated that their practice is that in proving that property is the proceeds of a crime, the underlying predicate offence must first be criminalized in order to conform to the fundamental legal principles enshrined in Section 36 (8) & (12) of the Nigerian Constitution.

The Scope of Predicate Offences

142. In order to include the widest range of predicate offences, Recommendation I encourages countries to apply the crime of money laundering to all serious offences. The approach to implementing this recommendation is by (i) using the catalogue of designated offences, or (ii) the limits of the penalties applicable or a mix of the two.

143. In defining the scope of predicate offences, Nigeria, as stated earlier, adopts a broad "all crimes approach", which applies to all underlying criminal or illegal acts regardless of where they were committed as provided in Sections 14 – 18 of MLP Act. The Act does not define what constitutes other "crimes or illegal act", nor does it list the categories of predicate offences. This situation leaves the provision too broad. The Nigerian authorities advised that the issue will receive legislative review. Thus, the definition of predicate offences as it stands now is too broad and needs to be amended.

144. Another concern arising from the adoption of the "all crimes approach", as opposed to the serious crimes approach is that one is expected to isolate all specific crimes from various existing legislation in the country in order to build up a

comprehensive list of the underlying predicate offences that have been criminalized by Nigeria. The laborious nature of pursuing such a task in order to implement or enforce this Recommendation is exemplified by the range of offences that constitute economic and financial crimes in the EFCC Act on the one hand and all other crimes that fall under the criminal code, penal code and other legislation on the other hand.

Relevant Statutes

145. Statutes that the Assessors were able to verify and which were matched against FATF minimum designated categories of offences include,

	Offence	Legislation	Relevant Sections
1.	Illicit traffic in stolen and other goods	Criminal Code Act, CAP 77, LFN, 1990 and CAP C38, LFN, 2004 Penal Code	Sections 391-400 Sections 427 - 433
2.	Corruption and Bribery	ICPC Act, 2000	
3.	Fraud	Criminal Code Advanced Fee Fraud Act, 2007	Sections 419 - 425
4.	Counterfeiting of currency	CBN Act, 2007	Section 17
5.	Counterfeiting and piracy of products	Copyrights Act, CAP 68, LFN, 1990	
6.	Environmental crime	Criminal Code	Sections 241-248
7.	Murder and grievous body injury	Criminal Code and Penal Code	Sections 307-363 of the Criminal Code and Sections 220-253,262-284 of the Penal Code
8.	Kidnapping, illegal restraint and hostage taking	Criminal Code Act	
9.	Robbery or theft	Criminal Code Act	
10.	Smuggling	Customs Act CAP 84, LFN, 1990	
11.	Extortion	Criminal Code Act and the Penal Code	
12.	Forgery	Criminal Code Act	
13.	Piracy	Criminal Code Act	
14.	Insider dealing and market manipulation	Investment and Securities Act	
15	Participation in organized criminal group and racketeering	Criminal Code and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), 2003	
16.	Terrorism including terrorist financing	EFCC Act for Terrorist Financing	
17.	Trafficking in human beings and migrant smuggling	National Agency for the Prohibition of Trafficking in Persons (NAPTIP), 2003	

18.	Sexual exploitation, including sexual exploitation of children	Criminal Code, Penal Code, and National Agency for the Prohibition of Trafficking in Persons (NAPTIP), 2003	
19.	Illicit trafficking in narcotic drugs and psychotropic substances	NDLEA Act, 1989	
20.	Illicit arms trafficking		

Extraterritoriality Committed Predicate Offence

146. Under section 14 (2) of the MLP Act, the predicate offence for money laundering extend to crime committed in other countries, and the person shall be subject to the same penalties had the offence been committed in Nigeria

Laundering One's Own Funds

147. Sections 14 to 16 of the MLP Act which create the offence of money laundering and related inchoate offences also specify persons who can be charged. The provisions consistently use "any person" or "person" which also includes natural and legal persons. Besides, there is no provision that expressly states that one cannot be charged for laundering one's own funds, nor are there any fundamental legal principles under the general law of Nigeria that prohibits it. Consequently, the authorities noted that the offence of money laundering applies to all persons who commit a predicate offence, irrespective of whether the person owns the money or not. As a further proof of the position of the law, the Assessors were referred to cases under prosecution where the launderers were the owners of the laundered funds.

Ancillary Offences

148. Inchoate offences to money laundering such as conspiracy, attempt, aiding and abetting, facilitating and counseling the commission of money laundering has been criminalized under S.17 of the MLP Act. Appropriate sanctions have also been provided against ancillary offences.

Additional Elements

149. It is a money laundering offence in Nigeria where the proceeds of crime are derived from a conduct that occurred in a country where that act is not an offence. Section 14 (2) of the MLPA stipulates that: *"A person who commits an offence under section 1 of this section shall be subject to the penalties specified in that subsection notwithstanding that the various acts constituting the offence were committed in different countries or place."*

Recommendation 2

Liability of Natural Persons

150. The offence of money laundering including its ancillary offences applies to natural persons under sections 14 to 17 of the MLP Act.

The Mental Element of the Money Laundering Offence

151. The AML regime in Nigeria state that the mental element of the offence could be inferred from objective factual circumstances. This provision of the law are found in section 19(2) of the MLPA, section 17 (4) of the NDLEA Act and section 19 (5) of the EFCC Act. The three provisions create the presumption of guilt where an accused person is in possession of property which he/she cannot satisfactorily account for. It is also a cardinal principle of the Nigerian criminal jurisprudence that in proving intent in any criminal trial, circumstantial evidence is admissible as a proof.

Liability of Legal Persons

152. Under the general law, legal persons are subject to criminal and civil liabilities. With respect to money laundering legislation, Section 15 (2) (b) (ii) of the MLP Act imposes criminal liabilities on legal persons. Criminal liabilities arising from the corporate sphere are not limited to the corporate entity alone; but extend to its directors and other officials. The EFCC Act, NDLEA Act, Investment and Securities Act and the CAMA have similar provisions on the issue. Such directors and officials may however escape liability where they are able to establish that the offence was committed without their knowledge or they exercised due diligence to prevent the commission of the offence. Where liability is established against a legal person, the sanctions include: (i) conviction and pecuniary fines under Section14 (2) of MLP Act; (ii) compulsory winding up under Section 18 (2) of MLP Act; (iii) civil damages for breach of duties; and (iv) administrative penalties under Section 15 (5) MLP Act.

Sanctions for money laundering

153. The law provides for sanctions against natural persons (including professionals) and legal persons. Under section 14 and 15 of the MLPA and section 20 to 22 and 24 of the EFCC Act, the sanctions range from fines, imprisonment of between 2 and 5 years to confiscation of laundered properties.

154. A number of concerns may be raised against these sanctions regime. First, the plea bargaining provision otherwise called compounding of offence under Section 14 (2) of the EFCC Act does not make the sanctions related to money laundering adequately and proportionately dissuasive or deterrent. In its application to money laundering offences, it constitutes a weakness in the law as it simply tends to reward criminal conduct. Also it can be a disincentive to serious money laundering investigations and prosecution; which can in turn negatively impact on the entire anti-money laundering regime. At the

moment, the EFCC can compound offence by collecting the equivalent of proceeds of crime with recourse to the court. This is a process that is subject to abuse. The authorities could not provide information on the cases that were compounded and the process for entering into negotiation for plea bargain with suspected launderer.

155. Second, the penalty of 2 to 5 years prison sentence is too low, having regard to the prevalence of corruption, and money laundering in the country and the public resources invested in the investigation and prosecution of such cases.

156. Third, the Assessors' concern were further heightened by the fact that the authorities may through the Attorney General invoke Article 174 (1) (c) of the Nigerian Constitution, which states that, *"The Attorney-General of the Federation shall have the power to discontinue at any stage before judgment is delivered any … criminal proceedings instituted or undertaken by him or any other authority or person"*

157. While the authorities stated that these powers are rarely invoked, recent prosecutions related to money laundering in the country concerning political officers seems to point to the likelihood of this broad power of the AG being abused in order to obstruct the prosecution of high profile suspects. The Assessors were of the view that the Constitutional provision justifies the need to review the plea bargaining provisions.

158. However, it is instructive to note that despite the challenges posed by the weakness in the AML regime, recent reports from the United Nations[8] show that EFCC has restrained cash and assets valued at over $5 billion US Dollars and secured 205 convictions since its establishment 5years ago. The EFCC is the only law enforcement agency in Nigeria that has demonstrated capacity in the prosecution of money laundering cases. The Assessors were however, not able to obtain the statistics during the onsite visit.

Recommendations and Comments

159. As at the date of assessment, Nigeria had ratified the UN Vienna and Palermo Conventions and had on the basis of such ratification sought to enact statutes that criminalize money laundering. The Economic Crimes Commission Act, 2004 and the Money Laundering (Prohibition) Act, 2004 jointly provide the basic anti-money laundering legal framework for Nigeria. These twin statutes are reinforced by the provisions of several other statutes whose focus may or may not necessarily be anti-money laundering in nature. They include:

- The National Drug Law Enforcement Agency Act, 1989 as amended – with provisions on drug related laundered funds;

[8] Mr. Antonio Mario-Costa, Director General, UNODC at the 6th National Seminar on Economic Crime, Abuja, 13 November, 2007.

- The Independent Corrupt Practices (and Other Related Offences) Commission Act, 2000 (partly concerns laundered funds originating from corruption);
- Central Bank of Nigeria Act, 2007 (as amended) which empowers the Bank to deal with laundering through the banking system;
- The Police Act which empowers the Police to investigate and prosecute financial crimes including money laundering; and
- The Customs and Excise Management Act, 1958 – which permits the Customs officials to detain and seize where appropriate laundered money.

A review of these legislation and institutional mechanisms revealed inter alia that:

160. By adopting an "all crimes or illegal acts" approach, the AML legislation failed to isolate serious offences or crimes that are money laundering related, thereby creating a gap or doubt as to what constitutes predicate offence as required by FATF Recommendation. The fact that the law does not define "illegal acts" is a significant shortcoming. The approach adopted by Nigeria appears too broad. The authorities also failed to provide a copy of the legislation that criminalized "all the illegal acts or crime" under Nigerian law to the Assessors. This is an important requirement as the Nigerian Constitution requires that no person shall be prosecuted for an offence that is not criminalized under Nigeria law. There is need for clarification of what constitutes "all illegal act or crime" under Nigerian AML legislation.

161. Furthermore, the sanctions applicable to natural and legal persons are not proportionate and dissuasive. This is a significant weakness which can undermine the entire anti-money laundering regime for reasons given earlier. It is recommended that the entire sanction regime be reviewed.

Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	LC	• The reference to predicate offence as constituting "all illegal acts or crime" is too broad and requires further definition in order to make it less ambiguous
R.2	PC	• The sanctions regimes are not proportionate and dissuasive. • The law on plea bargaining which allows the EFCC to compound any offence by accepting such sum of money as they think fit can significantly undermine the entire anti-money laundering sanctions regime, because in theory and in practice they have the potential of whittling down the deterrent effect of the sanctions.

2. 2 Criminalization of Terrorist Financing (SR.II)

Special Recommendation II

Description and Analysis

The Economic and Financial Crimes (Establishment) Act, 2004

162. Section 15 of the EFCC Act, 2004, makes the financing of terrorism a criminal offence as it states that:

15(1) "A person who willfully provides or collects by any means directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life..".

15 (2) "Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life".

15 (3) "Any person who, makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life".

163. Section 46 of the EFCC Act defines terrorism as:

(a) "any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or property, natural resources, environmental or cultural heritage and is calculated or intended to -

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii) Create general insurrection in a state..."

(b) "any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organization or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i), (ii) and (iii)..".

164. Nigeria has ratified the UN Convention for the Suppression of the Financing of Terrorism 1999 on 28th April 2003 and 7 out of the 13 terrorism conventions. Within the existing legal framework, there is evidence that the authorities have taken steps to confront terrorist activities, whether the threat has an international nexus or it is purely domestic in nature such as the Niger Delta situation or it is one with religious dimension as a few cases in Northern Nigeria suggest. It has been established by the authorities that there is a connection between the purchase of weapons and terrorist activities in the vulnerable regions. The DSS, which is responsible for interdiction of terrorists, also asserted that between 1999 and 2007 it investigated 29 cases involving money laundering and terrorist financing. The details of these cases were not provided to the Assessors.

165. The DSS reported that it arrested two Taliban elements in February, 2005, who possessed money meant for the purchase of explosives to engage in terrorist activities in Nigeria. They are currently being prosecuted. Two Pakistanis were arrested in a hotel in Lagos for undertaking terrorist related assignments on behalf of an unidentified person in the USA. The case was still under investigation at the time of the onsite.

166. The implementation of the existing framework has revealed some practical challenges. The major one being that EFCC Act does not provide a comprehensive framework for dealing with the tripartite offences of terrorism, namely, financing of terrorism, terrorists act and terrorist organizations, as envisaged by the FATF Special Recommendations and the FT Convention.

167. This legal gap is as a result of the absence of a comprehensive legislation on terrorist financing in Nigeria. The loopholes in the legal framework also partly account for the challenges the law enforcement and security agencies face in prosecuting suspected terrorists. These include, the release of accused persons by the courts on grounds of human rights; Constitutional requirement for clear definition of an offence for which a person is charged with; the ease by which money is transferred through the bureau de change, and other alternative remittance systems by suspected terrorists without detection; and the abuse of the NGOs' charity status to raise funds for terrorist activities by some scrupulous individuals.

168. In spite of the fact that Nigeria has ratified the Financing of Terrorism Convention, its existing law does not meet the requirements of the Convention. It is noteworthy that the authorities themselves have identified this omission and have presented Terrorism Prevention Bill to the National Assembly. A copy of the Bill was given to the Assessors.

Criminalization of financing of terrorism

169. Nigeria has criminalized terrorism, and some aspects of the TF convention but not as required under Article 2 of the TF Convention and FATF SR. II.1. While provision or collection of funds to be used to carry out a terrorist act is covered, provision or collection of funds to be used by a terrorist organization or individual terrorist is not. The

scope of "terrorist act" is not broad enough in particular with regards to Article 2 (1) of the FT Convention.

Predicate offences for money laundering

170. Terrorist Financing is not a predicate offence of money laundering.

Extraterritorial Jurisdiction for Terrorist Financing Offence

171. The existing law is not comprehensive and does not adequately meet the requirements of SR II.3

The Mental Element of the FT Offence (applying R2.2)

172. In the absence of FT law this does not arise. But the criminal code requires proof of mental element to secure a conviction and this is the case with Nigeria's criminal legal principles.

Liability of Legal Persons

173. The existing law does not cover legal persons and does not adequately meet the requirements of SR II.4

Sanctions for FT

174. The existing law provides for life imprisonment, however, this sanction may not be effectively applied in the absence of a comprehensive legislation and as indicated by the authorities with regards to problems faced by prosecutors in proving terrorist financing cases.

Analysis of Effectiveness

175. Given the draw backs mentioned earlier and the limitations in the existing legal framework, the implementation is currently not effective.

Recommendations and comments.

176. The authorities should ensure that the Bill before the National Assembly criminalizes not only terrorism but also terrorist financing and terrorist organizations in a manner consistent with Article 2 of the UN Convention on the Suppression of TF and FATF Special Recommendations. The authorities should also ensure that the requirements for effective implementation of TF law are legislated. TF should be made a predicate offence for money laundering.

Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR II	**NC**	• The existing provision under Section 15 of the EFCC Act does not criminalize TF as required under Article 2 of the UN Convention on the Suppression of Terrorist Financing and the FATF SR. II in relation to provision/collection of funds to be used for terrorist acts or by terrorist organizations or individual terrorists. • The existing law does not state that TF is a predicate offence for money laundering. • There are significant gaps in the existing law in terms of its scope and implementation. • The draft Terrorist Prevention bill submitted to the National Assembly is not a law and therefore not enforceable.

2. 3 Confiscation, freezing and seizing of proceeds of crime (R.3)

Recommendation 3

Description and Analysis

General

177. Nigeria law provides for the confiscation of laundered properties which represent proceeds from, instrumentalities used in and instrumentalities intended to be used for the commission of money laundering, and other illegal acts and property of corresponding value. At the moment, the type of confiscation provided in the law is confiscation based on criminal conviction. Other types of measures for recovery of proceeds of crime include seizure and forfeiture of cash and assets either through plea bargaining or through a court order.

The following legislation provide for confiscation measures and procedures to be applied:

Legislation	Implementing Agency	Date of Enactment
EFCC Act, 2004	EFCC, NFIU, CBN, Ministry of Justice	- EFCC Act, 2004 - CBN Act, 2007 and BOFI Act, 1991 - Attorney General's powers under Section 174 of the 1999 Constitution and Section 14 (2) of the EFCC Act
ICPC Act, 2000	ICPC	- 2000
NDLEA Act, 1989 as amended	NDLEA	- 1989
Advance Fee Fraud Act, 2007	EFCC NPF	- 2007

178. Confiscation, freezing and seizure measures are provided for in sections 20 to 26 of the EFCC Act, 2004. While Section 34 with its schedule B specifies the procedure for freezing suspects' accounts in a bank or other financial institution, Section 26 deals with seizure of property pursuant to arrest, search or confiscation. The specific provisions on confiscation are found in Sections 20 – 25 of the same EFCC Act.

179. In addition to this general statutory framework, other legislation has provisions that empower the authorities to freeze, seize and confiscate laundered assets through a court order. For example, sections 18 to 24 of the NDLEA Act cover situations where the source of the proceeds is from trafficking in narcotics, and sections 37 and 38 of the ICPC Act, 2000, where the source is from corruption. The legal frameworks do not only deal with proceeds of the laundered assets and properties but also the instrumentalities

used for the commission of money laundering offences. From the statutory provisions, the following authorities are involved in taking specific provisional actions at various levels – the EFCC, NDLEA, Customs, Police, the Attorney General, ICPC, and the financial supervisory authorities such as the CBN and NFIU.

180. Each institution can apply for an interim order. The court may, under section 29 (b) of the EFCC Act make an interim order of forfeiture where there is **prima facie** evidence that the property is liable to forfeiture. Under section 30 of the EFCC Act, once a conviction is secured, the EFCC can apply to the court for the order of confiscation. The Commission then sells the property and pays the proceeds to the Consolidated Fund of the Federation.

181. The Attorney-General under S. 31 (4) of the EFCC Act is empowered to make rules or regulations for the sale of confiscated properties. No such rules have been made five years after the establishment of EFCC. Apart from the NDLEA Act, neither the EFCC Act nor the MLP Act defines the terms: "freezing', "seizure' and "confiscation". These concepts constitute critical enforcement stages in any AML/CFT regime. The Assessors observed that there is lack of clarity as to the time to apply each stage across the agencies and this ambiguity has somehow impacted on the effectiveness of confiscation measures in the country.

182. The authorities informed the Assessment team that they have statistics of confiscated assets. However, there is no central system for recording the seized and confiscated assets. Each agency is required to keep its own record, which unfortunately is not easily accessible. The current process of managing records of confiscated assets did not help the Assessors in assessing the effectiveness of the regime.

ICPC Statistics

183. While ICPC claimed that it has seized and frozen some accounts in the banks, no records were given to the Assessors regarding the nature of such action. At the time of the onsite visit, no confiscation order has been issued on cases filed by ICPC in the court.

EFCC Statistics on Freezing, Seizure and Confiscation

184. EFCC stated that it has since its establishment seized, frozen and confiscated properties worth $5.5 billion through court orders and through plea bargaining. Statistics related to the assets were not available at the time of onsite visit.

NFIU Statistic on freezing orders

185. NFIU was not able to provide further information on the number of freezing orders issued to banks or other reporting entities as a result of STRs submitted to it.

Confiscation of property related to ML, FT or other predicate offences including property of corresponding value

186. Under section 20 of the EFCC Act, all assets and properties of persons convicted of money laundering and terrorist financing offences are to be confiscated, sold, and the proceeds paid into the Federal Government treasury. The reference to properties under Sections 6 and 25 of the EFCC Act include properties derived from proceeds of crime, properties and instrumentalities used directly or indirectly to commit or to facilitate the commission of the offence, properties of corresponding value, instrumentalities intended for use for the commission of the offence of money laundering and predicate offences. In the absence of the FT law, the properties and instrumentalities referred to under this provision may not include proceeds from terrorist financing. This may however depend on judicial interpretation of the extent to which the current terrorist financing provision permits the confiscation of proceeds of terrorist financing. In the face of current difficulties faced by the DSS in prosecuting the few terrorist financing cases in the courts and in the absence of any case that has been concluded based on this provision, the Assessors were of the opinion that the current provision does not capture properties and instrumentalities related to FT. Other laws with provisions that have confiscation provisions include the NDLEA Act, the Advance Fee Fraud Act, 2006, and the Corrupt Practices and Other Related Offences Act 2000.

Confiscation of proceeds of crime

187. Section 20 (3) of the EFCC Act states that "**proceeds**" connotes property derived directly or indirectly from the commission of an offence under the Act. Under sections 24, 25, 27 and the Declaration of Assets Form A in the Schedule to the Act, such property may be real or personal properties. They include vehicles, aircrafts, interest in land and buildings, cash, other negotiable instruments, securities and benefits. Whether the property is owned or held by a third party is irrelevant.

188. This is buttressed by the court decision in the trial of a former Nigeria's Inspector General of Police (IGP)[9], whose interest in certain companies were attached and frozen. The IGP sought to establish that certain properties belonged to the company and were not his personal property. However, the court decided that it was appropriate and recognized by Nigerian law for the "corporate veil" to be lifted to determine the owners of a company and its properties. The companies were subsequently prosecuted and convicted with the IGP. They were convicted for laundering proceeds of crime and all their assets confiscated and forfeited to the Nigerian government. The Companies were ordered to be wound up by the court as required under the Nigerian company law.

Provisional measures to prevent dealing in property subject to confiscation

189. Assets of persons may be frozen or seized prior to confiscation. This may occur at different levels, (a) during investigations pursuant to an arrest; and (b) where a person

[9] The Federal Government v. IGP Tafa Balagun & others, suit No FHC/ABJ/CR/14/2005

has been charged with a ML related offence. The EFCC and the NFIU can freeze the assets of a person under investigation for money laundering offences for 72 hours without a court order.

190. Under Section 34 (1) of its Act the EFCC and the NFIU can also apply to the court for "ex **parte order"** empowering it to instruct a financial regulator to freeze the bank account of a person under investigation for laundering money. Properties of such persons may also be seized pursuant to arrest or search (S. 26(1) (a), or forfeited as an interim measure under S.29 (b) of the Act. This can only be done under a court order made after an **ex parte** application have been considered and approved by the court.

191. The procedure under the ICPC Act is however different. ICPC may in some circumstances seize and freeze assets of a suspect without recourse to the court. This discrepancy in legislation and criminal procedure raises issues about human rights and constitutional issues of discrimination against persons who are accused of similar offences. It is also contrary to FATF principles. A final order for forfeiture may be made after conviction. It must be noted that the NDLEA, Police and Customs also have powers under their respective statutes to seize and freeze assets through court orders.

192. Some of the authorities conceded that there is no proper co-ordination of the process of freezing, seizure and even confiscation as various law enforcement agencies undertake different investigations and prosecutions. It was argued by some of the authorities that in the absence of a co-coordinating agency, the public send their petitions to any agency of their choice. These concerns suggest that adequate measures have not been put in place to give effect to section 6 (o) and 7 (2) of the EFCC Act which empowers the EFCC to play that co-coordinating role.

193. Section 6 (o) empowers EFCC to maintain ***"****liaison with the office of the Attorney-General of the Federation, the Nigerian Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes;*

194. Section 7 (2) provides that ***"****In addition to powers conferred on the Commission by this Act, the Commission shall be the co-coordinating agency for the enforcement of the provisions of the Money Laundering Act 2004; the Advance Fee Fraud and Other Related Offences Act 2007; the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, as amended; the Banks and Other Financial Institutions Act 1991, as amended; the Miscellaneous Offences Act; and any law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code."*

195. It was obvious from the discussions with the authorities and the private sector that these provisions of the law are not being effectively implemented.

Ex-parte Application for Provisional Measures

196. Another issue of concern is that the laws do not specify the duration of freezing orders issued against certain properties, including bank accounts. FATF Recommendation 3.2 provides that provisional measures such as freezing, seizure and forfeiture must be taken pursuant to court orders made after considering applications brought ex parte and within a specified time frame.

197. The exception to this under the Nigerian law is the 72 hour period of freezing required under the EFCC Act. However, there were concerns raised by the financial institutions that most of the frozen account are not covered by court orders and may often remain frozen for as long as the EFCC and NFIU wants it to. This is a concern shared by the private sector and clearly is a breach of Constitutional rights and needs to be reviewed by Nigerian authorities.

Identification and Tracing of Property subject to confiscation

198. Section 6 (d) of the EFCC Act confers power on the EFCC to adopt measures "to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which correspond to such proceeds." Section 26 of the same Act also empowers the EFCC to seize property which is incidental to an arrest or subject to forfeiture. The EFCC is responsible for the custody of the property, subject to an order of the court.

199 There are similar provisions in the NDLEA Act and the Police Act. Under section 12 of the MLP Act, the EFCC, Central Bank, other regulatory authorities and NDLEA may apply to the High Court by filing an ex-parte application to place a bank account under surveillance in order to trace and identify proceeds, properties, objects or the things related to the commission of a crime.

Protection of Bona fide Third Parties

200. There is no express provision in the MLP Act or EFCC Act that seeks to protect the rights of bona fide third parties. Section 48 (3) (b) of the ICPC Act, however, protects a purchaser in good faith for valuable consideration of the property. The authorities advised that this vacuum in the anti-money laundering law would be addressed.

Power to Void Actions

201. The powers of the law enforcement to seize and freeze assets are derived from the law and while it is not always based on a court order, the court has the power to void or validate such an action. Additionally, under the common law principles, the court can void upon illegal contracts and contracts that are contrary to public policy.

Additional elements

202. Section 7 (1) (a) of the EFCC Act provides for the confiscation of properties of corporate bodies or organizations that are associated with illegal activities. The authorities informed the assessors that civil based confiscation is not known to Nigerian Law. There are however references to the concept in the EFCC Act. Section 19(5) of the EFCC Act creates the presumption that in any trial for a money laundering offence, the burden of proof will shift to the person who is in possession of property or pecuniary resources disproportionate to his known income and for which he cannot satisfactorily account for.

Recommendations and Comments

203. A body of laws with relevant institutional structures exists to facilitate freezing, seizure, forfeiture and confiscation of laundered properties and proceeds from money laundering and instrumentalities used to commit these offences. These laws are the money laundering related statutes, the criminal procedure code and the civil procedure rules. Nevertheless, some gaps exist in the laws and current enforcement mechanisms. The gaps are:

- The rights of bona fide third parties are not generally given legislative protection, except under the ICPC Act;
- There is no time limit for freezing made pursuant to a court order, notwithstanding the legal presumption that a person is innocent until proved guilty of an offence under the Nigerian Constitution.
- No rules have been made by the Attorney-General under section 31 (4) and 43 of the EFCC Act to guide the management and disposal of forfeited or confiscated properties. The current regime also does not set out modalities relating to freezing having regard to the rights of persons and the powers of Government under the Nigerian Constitution; or in conformity with FATF Recommendations.
- The absence of a comprehensive FT legislation implies that it will be difficult to confiscate terrorist related properties and therefore the effectiveness of the measures required under SR.III.1 could not be ascertained.
- The provision under the ICPC Act which allows the Agency to freeze assets without reference to the court is discriminatory and perhaps unconstitutional.
- An important implementation issue which affects the effectiveness of the measures is the apparent lack of adequate co-ordination that the EFCC Act expects from the EFCC. The authorities are advised to fill the legislative gaps itemized above to further strengthen the legislative measures required to give effect to the interim actions and confiscation measures under the law.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	**PC**	• Significant legal gaps exist in the confiscation regime in terms of: • Property of corresponding value and instrumentalities intended for use in TF are not covered and it may be difficult to obtain confiscation orders in relation to those properties. • Lack of definition of important concepts such as freezing, seizure, forfeiture and confiscation as well as inconsistency in the laws relating to freezing of assets makes the regime ambiguous. • Insufficient legal protection for bona fide third parties. • Absence of rules to manage and dispose of confiscated properties. • Absence of comprehensive FT legislation • Weak co-ordination in the AML/CFT regime, which in turn has created a vacuum in the centralization of statistical data on ML and FT investigations, freezing, seizure, forfeiture and confiscation. • Absence of statutory provisions to void or pre-empt actions that render confiscation nugatory.

2. 4. Freezing of funds used for terrorist financing (SR.III)

Special Recommendation III

Description and Analysis

The Economic and Financial Crimes (Establishment) Act, 2004

204. The Assessors sighted the instrument of ratification of the UN Convention for the Suppression of the Financing of Terrorism 1999 (FT Convention). Section 15 of the EFCC Act criminalizes terrorism but does not adequately criminalize terrorist financing and terrorist organizations as required by the FT Convention and FATF Special Recommendations.

205. As discussed under Recommendation 3, legal provisions exist to govern freezing, seizure and confiscation of laundered funds but the provision is narrow with respect to proceeds traced to terrorist financing. Within the limited statutory framework, some authorities like the DSS have demonstrated to the Assessors that steps have been taken to confront terrorism but this is ineffective, particularly in the absence of comprehensive definition of terms, limited scope of Section 15 of EFCC Act which does not cover terrorist organizations and lack of procedure for the freezing of assets of persons and entities involved in terrorist activities.

206. The Central Bank had only recently issued a circular to the banks to forward suspicious transactions relating to TF to the NFIU without providing further guideline as to how to detect terrorist funds and the process for seizing, freezing, and confiscation. 209. There is also an absence of a clearly defined and uniform process for implementing UN Security Council Resolutions (UNSC) 1276 and 1373. While the Central Bank reported that it receives the list of persons whose bank accounts and assets are to be frozen from the United States Embassy in Nigeria and then circulates to the banks and other financial institutions, the DSS reported that it receives the list from the Ministry of Foreign Affairs. Again while the EFCC indicated that terrorist financing matters are handled by the NFIU and CBN, the NFIU also stated that they are handled by either DSS or EFCC. The lack of a strategy with regards to the implementation of the UNSC Resolution is an impediment to the implementation of the requirements of SR III.

207. Further, the existing legal framework does not define such key concepts as "freezing", "seizure", "confiscated" and "funds" as required under the interpretive Note to Special Recommendation III. Clearly, it is not only the appropriate law that is not in place, but also an effective mechanism for implementing UNSC Resolutions.200. The weaknesses previously alluded to under the discussions in Recommendation 3, and SR I apply here. The authorities themselves observed that there are many grey areas in the terrorism law of Nigeria, hence the need to design a clearer and a more comprehensive legal framework. Consequently, the preventive measures relating to terrorist financing are significantly inadequate and ineffective.

Freezing Assets under UNSC Resolution1267

208. There are no specific laws and procedures in place to guide the freezing of terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee. Thus, there is no mechanism that specifies the period within which the freezing should take place to avoid delay. The banks simply rely on the CBN circular, which in itself is vague, to freeze suspected funds. The authorities stated that only one freezing action has been implemented under UNSC Resolution 1267. This freezing action has not been challenged in the court.

Freezing Assets under UNSC Resolution 1373

209. Although it is recognized that UN Security Council Resolutions are automatically binding, yet there is no comprehensive mechanism in place to enforce such Resolutions. Some of the provisions in the draft TF Bill in the National Assembly will in future provide the legal basis for its implementation.

Freezing Actions Taken by Other Countries

210. Section 6 (d) of the EFCC Act empowers the EFCC to seize proceeds of terrorist acts locally. Foreign assets of convicted persons under any offence established under the EFCC Act may also be confiscated. This is provided under Section 22 of EFCC Act. Under the Mutual Legal Assistance Agreements executed between Nigeria and the USA in 1989, Nigeria may give effect to freezing mechanisms initiated in the USA. The scope of this power is not broad enough to cover all U.N. member countries. Additionally, there is no regulation and procedure in place to give prompt determination to such foreign actions, particularly when it relates to terrorist financing.

Extension of SR III.I – III.3 to funds or assets controlled by designated persons

211. The EFCC Act permits the freezing of assets of any person involved in terrorist activities. It does not provide for "joint ownership", ownership" or "control of funds" or "terrorist organizations". To this extent, the mechanism for extending the freezing actions to those categories under SR.III.4 is too narrow to achieve the desired objective.

Communication to the Financial Sector

212. Apart from the indication that the Central Bank issues circulars to the banks concerning persons and bodies whose accounts are to be frozen under UN Security Council Resolutions, the Assessors did not identify any effective system of communication of actions taken under the freezing mechanism. The CBN mechanism was also found to be adhoc in nature as there is no system-wide understanding as to the procedure to be adopted in receiving and disseminating the UNSC Resolutions or lists of suspected terrorists.

Guidance to Financial Institutions

213. There is no guidance that has been issued to FIs on how to treat FT related information apart from the Circular that instructed them to send STRs on FT to the NFIU.

De-listing Requests and Unfreezing Funds of De-listed Persons

214. There are no publicly known procedures for de-listing and unfreezing of funds.

Unfreezing Procedures of Funds of Persons Affected by Freezing Mechanism

215. No such procedures exist.

Access to frozen funds for expenses and other purposes

216. No such procedures exist.

Review of Freezing Decision

217. No such procedures exist, but the constitutional right to property coupled with the court's power to review executive actions may provide an alternative mechanism for any person to apply to the court where that person's funds or other assets have been wrongly seized or frozen. The power of judicial review can and do prevail over freezing order. However, there are concerns that the suspects may be scared to ask for review when nobody has communicated the reason for the freezing order to the affected person or organization.

Freezing, seizing and confiscation in other circumstances

218. The statutory provision in the EFCC Act which broadly extends freezing, seizure confiscation to any crime or illegal act opens the door to enforce similar measures in other circumstances.

Protection of third party rights

219. In the absence of the Terrorist Financing legislation, there is no provision that protects the rights of bona fide third parties in terms of the standards provided in Article 8 of the Terrorist Financing Convention.

Monitoring compliance with obligations

220. There is no effective monitoring mechanism in place.

Recommendations and Comments

221. The Terrorism Prevention Bill in the National Assembly should be passed as a matter of urgency, taking into account the provisions of the UN Convention for the Suppression of the Financing of Terrorism (1999). There is need to review the weak mechanism put in place to enforce UN Security Council Resolutions as well as the statutory provisions on Nigeria's domestic law on TF. The authorities are advised to design effective mechanisms taking into consideration the following recommendations:

- Dissemination, implementation and monitoring of UN Security Council Resolutions;
- Designate an agency to manage and implement a new TF regime after the Bill has been passed;
- Development of a procedure for de-listing and unfreezing of funds and other assets;
- Defining the roles of relevant institutions involved in handling TF matters;
- Protecting the rights of bona fide third parties
- Development of a centralized statistical data on the actions taken under TF laws.

Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	• The existing EFCC provision on the freezing of terrorist funds and assets does not cover terrorist organizations and entities • No procedure or guideline has been issued to LEAs and FIs on the implementation of the SR III freezing mechanisms • There is no mechanism in place for the enforcement of UN Security Council Resolutions 1267 and 1373. • There is no central authority with the responsibility for the implementation of TF freezing and confiscation measures.

Authorities

2. 5 Financial Intelligence Unit and Powers (R.26, 30 & 32)

2.5.1 *Description and Analysis*

Recommendation 26

222. The legal provisions relating to the FIU are set out in Section 1 (2) of the Economic and Financial Crimes Commission (Establishment) Act (EFCC Act) and the EFCC Board Resolution of 2 June, 2004. The NFIU is an administrative type FIU that became fully operational in January 2005. Pursuant to Paragraph 1 of the EFCC Board Resolution, the main function of the NFIU is to receive, analyze and disseminate Suspicious Transaction Reports (STRs) related to AML/CFT activities in Nigeria. As such, NFIU is the central authority with the mandate to receive, analyze and disseminate information on STRs as required by Recommendation 26. This information are obtained directly or indirectly from financial institutions, designated non-financial businesses and professions and law enforcement agencies in accordance with the provisions of the Money Laundering (Prohibition) Act and any other law that may be enacted in that regard by the National Assembly.

Issuance of guidance to FIs and DNFBPs

223. The NFIU is mandated under Paragraphs 7 and 8 of the EFCC Board Resolution to provide guidance on reporting procedures and templates to FIs and DNFBPs. The guidance is provided either directly by the NFIU or in conjunction with the CBN and takes the form of guidance notes and instruction manuals. These guidance notes and circulars, while not a law or regulation are binding on all FIs and DNFBPs. The guidance issued by the NFIU to FIs and DNFBPs defines the transaction types that must be filed, when these entities should file, and how to properly complete a reporting form before sending them to the NFIU. However, NAICOM and SEC have issued further guidance to reporting entities on general money laundering issues and KYC principles. Guidance notes and directives that have been issued by the NFIU in collaboration with the CBN include,

- Circular on STRs reporting to EFCC/NFIU – April, 2005
- Circular on CTR reporting to EFCC/NFIU – March, 2006
- Circular issued of OFIs on STR reporting to EFCC/NFIU - June, 2005
- Circular on terrorist finance related STRs – August, 2006
- KYC manual to FIs and OFIs by CBN in 2003

224. Prior to the establishment of the NFIU, STRs were forwarded to the CBN and SEC, however, the CBN circular of April, 2005 directed all reporting institutions to

report only to the NFIU. The assessors were concerned that the circular did not indicate how the insurance and DNFBPs would submit their STRs. The SEC also issued a circular to capital market operators to submit all STRs to the NFIU. It does seem that SCUML and NAICOM can still receive STRs from reporting entities before forwarding to the NFIU despite this circular because of lack of clarity. The NFIU reported that there was no ambiguity as to the central reporting role of the agency.

225. In the meetings with NAICOM, SCUML, and some DNFBPs, the NFIU position was contradicted. NAICOM reported that even though it has issued KYC guidelines to entities in the insurance sector, not much additional guidance has been provided in terms of training or instructions on how to fulfill their reporting obligations. Based on the statistics received from NFIU, it was also difficult to determine if reporting entities understand their reporting obligations under the AML regime. The assessors observed that the NFIU needs to strengthen its regulatory role across all reporting entities, including providing training to SROs.

Reporting procedure

226. The NFIU has both manual and e-reporting formats. They reported that the online form has been developed to enable banks to complete and submit STRs and CTRs electronically to NFIU. Once the NFIU receives the electronic reports, they are downloaded to the FIU database. A letter is sent to the reporting entity to acknowledge receipt of the submitted report. The report would then be sent to the NFIU analyst for further research and analysis. If additional information is required by the NFIU analyst, he can either call or visit the reporting entity to obtain more information. It may also be necessary to cross-reference the information obtained against other information already stored in the database to generate further intelligence. The NFIU reported that it takes 2 to 5 days to analyze a report depending on the level of detailed information provided by the reporting entity.

Access to information from other agencies

227. The NFIU has direct and indirect access to information from agencies other than the reporting entities. Specifically, the NFIU has access to the manual database of the following agencies: EFCC, CAC, SEC, FIRS, CBN, NDLEA, NIS, NIA, FRS, DSS and NCS. The NFIU's access to these networks is usually facilitated by the officers from those agencies that are attached to the FIU.

228. Currently, officers are seconded from ten Nigerian agencies to the NFIU. In the coming year, the NFIU plans to include additional agencies to the current pool. These officers will be drawn from car licensing agency, land registry, and insurance agencies.

229. With the exception of CAC, most of the information held by these agencies are in hard copy and often not available for immediate access. The data retrieval process is also made more difficult by the fact that the Nigerian police do not have a criminal database.

230. The NFIU has also subscribed to commercial and open data base sources such as World Check, Banker's Almanac, and IMOLIN (maintained by the United Nations Office on Drugs and Crime) through the Egmont group network and other international law enforcement agencies for the purpose of enhancing its intelligence network and analysis.

Access to additional information

231. Section 38 of the EFCC Act and the Board Resolution give the NFIU the authority to "seek and receive information from any person, authority, corporation, or company without let or hindrance in respect of offences it is empowered to enforce under this Act." In addition, Section 20 of the MLP Act provides that the NFIU can obtain records and any additional information it may seek directly from reporting parties (i.e., financial institutions and DNFBPs) in order to ensure compliance with the MLP Act.

232. Representatives from the NFIU informed the evaluation team that it can go through the EFCC to seek a court production order if the matter under analysis did not arise from STR reported by a particular financial or non-financial institution in order to obtain additional information.

STRs dissemination

233. Once a report is received, it goes through different levels of analysis to determine if it should be disseminated to investigating agencies for further review. Pursuant to Paragraph 1 of the EFCC Board Resolution, the NFIU is responsible for disseminating information to domestic law enforcement agencies and supervisory or regulatory authorities. NFIU also disseminates information related to money-laundering or terrorist financing cases internationally to other FIUs upon request.

234. Additionally, information on STRs and CTRs is disseminated domestically through NFIU newsletters, issuance of guidance notes or during meetings with private sectors. The assessors observed, however, that there was no structured process of feedback to reporting entities or SROs and that this may undermine the nature of information sent to the NFIU and the confidence of reporting entities. During meetings with some private sector and law enforcement agencies, they noted that the feedback from the NFIU is poor and should be improved.

Terrorism and terrorist-financing related STRs

235. The CBN and NFIU have issued a circular to the banks requiring them to submit TF related STRs to the NFIU. The assessors expressed concern about the validity of the circular. They were informed by the authorities that the circular derives its legal authority from Section 15 of the EFCC Act which criminalizes terrorist financing in Nigeria. In addition, they referred to the power of the CBN and NFIU to issue directives, circulars and guidance notes. At the moment, this circular has being circulated only to FIs and OFIs. However, no TF related has been reported to NFIU.

Operational independence

236. The NFIU's operational independence is based on the EFCC Board Resolution of June, 2004. Although the NFIU is housed within EFCC and derives its budget from EFCC's budgetary allocation, the NFIU informed the assessors that it remains operationally autonomous from the EFCC. However, based on the analysis of the EFCC Act, there still remain some concerns about how independent the NFIU is from the EFCC.

237. The board members, who are made up of heads of agencies involved in the fight against money laundering and terrorist financing in Nigeria, include the CBN, SEC, DSS, NAICOM, Customs, CAC, Police, and Ministries of Justice, Finance, and Foreign Affairs are appointed by the President. The President has the power to remove any of the members either on grounds of ill health, misconduct or inability to perform the functions of the office[10]. The board of the EFCC, headed by the EFCC Chairman appoints the Director of the NFIU and he reports to the EFCC Chairman or the board as a co-opted member. As the chief accounting officer of the NFIU, the Director's primary responsibilities are to provide direction, guidance, and professional leadership to FIU. Under paragraph 41 of the Board Resolution, it states that the Chairman of the Board can give directives to the NFIU and that "*the Board may give the NFIU such directives of a general nature with regard to the exercise of its functions"*

238. The assessors were concerned that the EFCC board or the Executive Chairman of EFCC may be able to exert considerable control over the NFIU's operations since the EFCC (Establishment) Act and Board Resolution are not clear in stating the NFIU's operational autonomy in relation to the EFCC. It is not clear if operational autonomy exists with regard to the execution of the NFIU mandate. Some of these concerns were also expressed by financial institutions and other law enforcement agencies that referred to NFIU as the same with EFCC.

239. As an administrative –type FIU, the NFIU does not require the permission of the EFCC Board in order to exchange information with other FIUs, and it appears that it is does refer all cases for investigation and prosecution to the appropriate Nigerian authority. However, the ICPC – the anti-corruption agency - expressed concern that NFIU refers all investigation reports to EFCC regardless of whether it is AML, TF or corruption related offences. As reflected in the organogram below, NFIU does not have a management structure other than the Director who determines what is to be analyzed and disseminated. At the time of the on-site visit, the assessment team did not receive a copy of the NFIU's annual report for 2005 and 2006 nor a copy of the NFIU's annual budgetary allocation, thus making it difficult for the assessors to determine the NFIU's over-all budget and activities that have been implemented over the last two years.

[10] Section 3 (2) of the EFCC Act, 2004.

Protection of information

240. There is no specific legislation on the protection of information. The authorities made reference to Section 39 of the EFCC Act as the legal framework for the security of information and dissemination. However, the provision of Section 39 refers to information held by law enforcement type officers which would not be directly applicable to administrative-type officials as the NFIU personnel. The Assessors were informed that the Official Secrecy Act and the Public Service Rules are used by the NFIU as its Code of Conduct for all NFIU Employees. The NFIU requires that each employee sign an agreement that legally binds them and which provides penalties if they fail to uphold the secrecy/confidentiality requirements stated in the Official Secrecy Act. Therefore, it seems that disclosure of information cannot be done without following the existing approval channels in the NFIU.

241. NFIU has issued an internal guidance "NFIU IT Policy" to staff members on the protection of information submitted online. NFIU has networked the entire office environment in Local Area Network (LAN) architecture and has plugged potential security leakages in addition to rolling out a comprehensive backup/archival regime.

242. In order to ensure that only authorized individuals have access to the financial database, all NFIU staff member must be vetted and are required to sign a confidentiality agreement prior to their employment. Staff members are screened and cleared by security agencies before employment. They are also bound by the national code of conduct and oath of secrecy applicable to public officials.

243. Additional safeguards for protecting financial information include firewalls that prohibit unauthorized users from accessing the database, and permitting "read-only" access to authorized NFIU staff. A security module is built around all IT devices housing STRs & CTRs. STRs and CTRs that are manually collected are stored in a separate storage room with extra security measures to ensure safekeeping.

Public reports

244. According to Paragraphs 13 and 14 of the EFCC Board Resolution, the NFIU must monitor and undertake studies on emerging money laundering techniques and patterns; and liaise with other agencies in the publication of money laundering reports and dissemination of statistics of economic and financial crimes.

245. NFIU has been publishing newsletters which are made available to stakeholders. During the onsite assessment, the NFIU provided the evaluation team with copies of its monthly newsletters from June to November 2006 and April 2007. Upon review of the NFIU's newsletters, the team found that the information contained therein provides some guidance to Nigerian reporting entities, but did not contain any statistics regarding the number of STRs and CTRs collected or analyzed, or the number of cases that had been sent for further investigation or prosecution. Although the NFIU stated that it had completed a typologies study co-sponsored by GIABA on cash transactions, there was no

report found in the newsletters or any other publications describing the findings from these study or other typologies on money laundering trends in Nigeria.

246. Although the NFIU is actively producing monthly newsletters to the public, it should ensure that the contents include clear and accurate statistics on financial investigations and prosecutions, as well as money laundering and terrorist financing trends and typologies. The assessors observed that the newsletter would have been a good source of feedback mechanism to stakeholders if the information in it were adequate.

Egmont Group membership

247. Nigeria applied and obtained membership to the Egmont Group of FIUs in May, 2007. The NFIU is connected to the Egmont Secure Web, which allows for the secure exchange of information between member FIUs. The admission of the NFIU into the Egmont Group demonstrates the NFIU's regard to the Egmont Group Statement of Purpose and its Principles for the Exchange of Information between Financial Intelligence Units on Money Laundering Cases. The NFIU does not share information passed on through the Egmont Secure Web to a third party without prior consent from the sending party.

248. The NFIU has received the requests in the table below and responded to them. NFIU has also signed Memorandum of Understanding (MOUs) with a couple of countries for the exchange of intelligence. The table below shows the number of requests sent by NFIU to other countries, requests received by NFIU and countries that have initiated MOUs with NFIU.

Requests received from other FIUs - 29 from 22 countries
Requests sent from NFIU to other FIUs - 15
Requests responded to by NFIU - all

Requests made to the NFIU

S/N	COUNTRY / FIU	NO. OF CASES	CASE STATUS
1	Argentina	1	Under investigation
2	Bahamas	3	All replied
3	Chile	1	Under investigation
4	Croatia	1	Under investigation
5	Germany	1	Replied
6	Jersey islands	1	Replied
7	Lebanon	1	Replied
8	Liberia	1	Replied
9	Mauritius	2	1 replied 1 under investigation
10	Netherlands	1	Closed
11	Peru	1	Under investigation
12	Portugal	4	Replied, through their Embassy

13	Russia	1	Under investigation
14	South Africa	1	Replied
15	Switzerland	1	Replied
16	United Kingdom	10	Replied
17	United States of America	1	Replied
18	Venezuela	1	Under investigation
19	Zimbabwe	1	Replied
TOTAL		**34**	

Requests made by the NFIU to other FIUs

S/N	COUNTRY / FIU	NO. OF CASES	CASE STATUS
1	Bahamas	1	Closed
2	Bermuda	1	Assets frozen
3	Equatorial Guinea	1	Under investigation
4	Germany	1	Responded
5	India	1	Request for additional information
6	Italy	3	No response
7	Marshal Islands	1	No response
8	Peru	1	No response
9	St. Vincent & Grenadines	1	Under investigation
10	South Africa	1	Under investigation
11	Spain	1	No response
12	Switzerland	1	No response
13	United Arab Emirates	3	1 is closed 2 under investigation
14	United Kingdom	2	No response
15	United States of America	1	Closed
TOTAL		**20**	

Memoranda of Understanding (MOUs) with other FIUs

S/N	COUNTRY	MOU STATUS
1	Bahamas	MOU in process
2	Barbados	"
3	Cameroon	"
4	Cayman Islands	MOU Signed
5	China	MOU in process
6	India	"
7	Mauritius	"
8	Romania	"
9	Senegal	MOU Signed
10	South Africa	MOU in process
11	Ukraine	"
12	Venezuela	"
TOTAL	**12 COUNTRIES**	

FIU structure, resources, integrity standards, and training

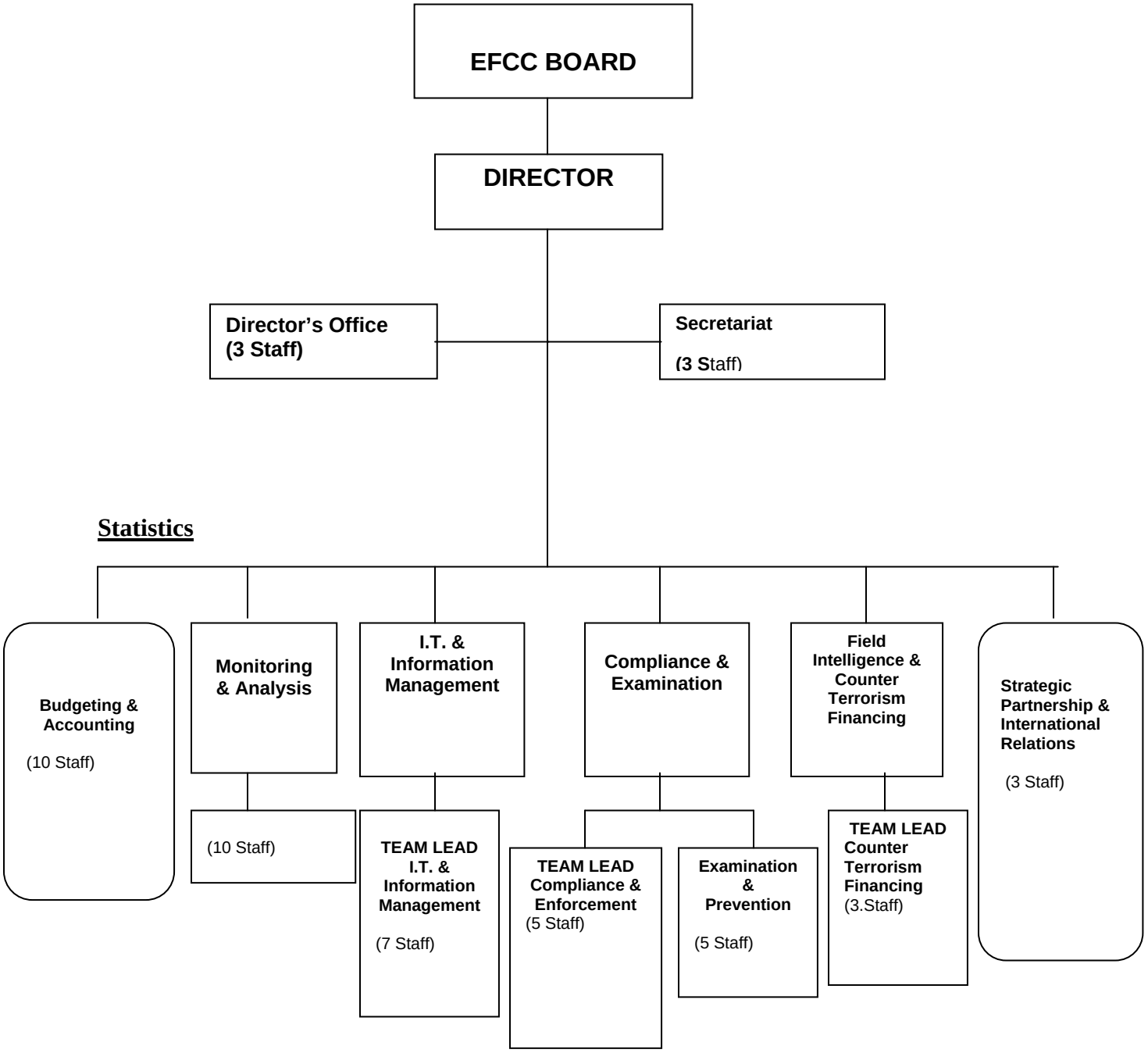
249. The NFIU is made up of 7 departments namely, Monitoring and Analysis; Information Management; Compliance and Enforcement; Strategic Partnership and International Relations; Field Intelligence on CFT; and Administration and Finance.

250. It currently has 52 professional staff members and 8 support staff. NFIU reported that they are well funded both from the regular budget and the external funding from international development partners. Assessors could not get a copy of the FIU budget.

251. NFIU staff members are subject to the Public Service Rules (Rules are applicable to all staff working in the public service in Nigeria), and the national Code of Conduct. Staff members have skills in areas such as accounting, banking, computing, legal advisory services, and law enforcement.

252. Staff from NFIU has attended training within and outside Nigeria in areas such as tactical intelligence analysis, banking operation, investigation strategies and techniques, international treasury operations, and criminal investigation techniques. They have also participated in workshops on asset recovery and confiscation. NFIU staff members have access to the EFCC Training and Research Institute where 36 staff members were trained in 2005.

NFIU Organogram



257. The NFIU is authorized to collect statistics and records on money laundering in accordance with its mandate.

Statistics – NFIU

REPORTING ENTITIES	First Quarter 2007		Second Quarter		3rd Quarter		4th Quarter	
Financial Institutions (FIs)	**STR**	**CTR**	**CTR**	**STR**	**CTR**	**STR**	**CTR**	**STR**
Banks	28	811,699	1,252,971	10	1,545,461	41	1,274,993	34
Bureau De Change	0	3,782	4,231	0	8,789	0		0
Community Banks		114	208	0	182	0	221	
Securities Operators	0	236,642	3231	0	9721	0	9,679	0
Insurance companies	0	0	0	0	0	0	0	0
Designated Non Financial Institutions	9	237	592	7	704	3	584	8
Discount Houses	0	12,979	8,962	1	7,543	0	11,701	0
Mortgage Institutions	0	5,155	4,726	0	5,332	0	6,451	0
Totals	**37**	**1,707,608**	**1,274,713**	**18**	**1,577,732**	**44**	**1,303,629**	**42**

Status of STRs Received

*Added to the total STRs

CTRs Escalated To STR	Under Investigation	Disseminated / Referrals	Monitoring	Closed
5	**70**	**16**	**47**	**3**

Breakdown of Referrals flowing from STRs Received

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
EFCC	7	5	0	3
Police	0	0	0	0
NDLEA	0	0	0	0
ICPC	0	0	0	0
FIRS	0	0	0	0
Customs	0	0	0	0
DSS	1	0	0	0

Other relevant statistics received

Mention if any E.g. Customs Declaration statistics

STATION	FIRST QUARTER	SECOND QUARTER
Murtala Mohammed International Airport	4715	6,586
FCT	893	1,097
PHC	-	-
IDIROKO	159	206
SEME	2197	1,841
KATSINA	54	53
KANO	197	265
SOKOTO	-	23
CALABAR	-	284
TOTAL	**8215**	**10,355**

Additional elements

253. The NFIU has power to request additional information from reporting entities. NFIU disseminates information to relevant LEAs domestically and internationally to other FIUs when requested through the Egmont Group network.

2.5.2 Recommendations and Comments

254. The NFIU is compliant with some criteria of R. 26. However, there are some key aspects that require further implementation by NFIU in order to ensure full compliance with this recommendation. With regard to the NFIU's autonomy, Nigeria's EFCC Act and Board Resolution should be revised to clarify the delineation of powers between the EFCC and the NFIU. It was particularly unclear if the NFIU had operational autonomy from the EFCC.

255. The statistics provided by the NFIU regarding the number of STRs and CTRs received by the various reporting entities in 2007 were inconsistent with the responses given by representatives from the various reporting entities. The NFIU informed the assessors that the total number of STRs that had been provided were not in fact completely accurate. Furthermore, there were no statistics provided by the NFIU regarding the number of STRs related to terrorist financing offences that were received, analyzed and disseminated by the NFIU in 2006 and 2007.

256. While the monthly newsletters released by the NFIU are informative and are published regularly, the contents lack statistics regarding the number of STRs or CTRs collected or analyzed, or the number of cases that had been referred by the NFIU to law enforcement agencies for further investigation or prosecution. The newsletters also do not contain information on typologies or trends identified from the information collected and analyzed. In order to improve the content of the information contained within the NFIU's newsletters, it is recommended that the NFIU is actively producing monthly newsletters, it should ensure that the contents include clear and accurate statistics , as well as any ML/TF trends identified or and typologies studies completed.

257. Although, the NFIU maintains secure and strict safeguards on all received information and data, there is no legal provision that requires the NFIU to do so. It is recommended that the authorities should close this gap by legally stating the responsibility of the NFIU to ensure that information held by the NFIU is securely protected and disseminated only in accordance with the law.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	PC	• The law is unclear regarding the operational autonomy of the FIU. • The extent of the Director's powers under the EFCC and its Board is ambiguous. • There is no legal provision that requires the NFIU to ensure that the information it holds is securely protected and disseminated only in accordance with the law. • FIU statistics on STRs and CTRs received, analyzed, and disseminated were either not provided or were inconsistent and could not be accurately verified. • Public reports issued by the FIU do not contain all required information, and statistics on STRs and CTRs, or trends and typologies on ML/TF.

2.6 Law enforcement, prosecution and other competent authorities – framework for the investigation and prosecution of offences, confiscation and freezing (R.27, 28, 30&32)

2.6.1 *Description and Analysis*

Recommendation 27

258. The Nigerian Police - Police Force Act as amended by section 3 Cap 19 LFN, The EFCC by virtue of sections 6 (b) & (d) the EFCC Act, the NDLEA by virtue of section 4 of the NDLEA Act, the DSS under the National Security Agencies Act, the ICPC Act, 2000 establishing the Anti-Corruption Commission, and the Attorney –General by virtue of section 174 of the 1999 Constitution provide the legal framework for the law enforcement agencies (LEAs) power to investigate and prosecute financial crime offences, and to freeze and confiscate assets derived or obtained from proceeds of crime.

Money laundering investigations

259. The EFCC is mandated to investigate and prosecute money laundering and terrorist financing cases. NDLEA can also investigate and prosecute drug based laundering cases. In some cases, the fiat of the AG would be required before the commencement of prosecution and for the purpose of enforcing court decisions. Section 174 of the Constitution confers on the AG the authority to institute criminal proceedings, take over prosecutions instituted by another person or authority, and discontinue any criminal proceedings, prior to the delivery of judgment by a court.

260. The NFIU is the EFCC unit responsible for coordination of AML/CFT policies, issuing of guidelines and sharing of intelligence amongst all stakeholders. NFIU works with all the law enforcement agencies in the investigation and prosecution of AML/CFT cases.

Seizure, freezing and confiscation powers

261. EFCC, ICPC, and NDLEA have powers to apply for seizure, forfeiture and confiscation orders from the court. The NFIU had applied this power by filing an application to the court and in some cases without recourse to the court for freezing of accounts for 72 hours.

Investigation of terrorist financing

262. The DSS is charged with collection of intelligence related to terrorism and terrorist financing in collaboration with the NFIU and other related agencies. The DSS cannot prosecute but it can forward investigation reports to the AG's office for prosecution. However, there seems to be at the moment some concerns regarding the agency that should prosecute terrorist financing. It is expected that the pending Bill on Anti-Terrorism will clear this ambiguity in the existing legislation.

Powers to waive or postpone arrest and seizure

263. The EFCC Act, Sections 6 (d) (g), and (j) and Sections 3 (c) (1) to (p) of the NDLEA Act permit the use of scientific method in the investigation of money laundering and terrorist financing, including controlled delivery, interception of communication, records, and documents required for effective investigation and prosecution of cases. The authorities reported that these methods are used during investigation, in addition to the power to waive arrest when there is reasonable ground to suspect that an offence has/ been committed. While this is applied in practice based on existing legislation, there is no formal policy or strategy regarding the use of these powers.

Additional Elements:

264. Different methods can be used by investigation agencies to postpone investigation in order to gather intelligence. These include plea bargaining, use of suspect as witness, wire tapping, and power to compel production of documents. The authorities reported that joint operations can be conducted with other law enforcement agencies as provided in Sections 6 (j) and (o) of the EFCC Act and the NDLEA Act. The various agencies including EFCC, ICPC, NDLEA, Customs, DSS, Police have specialized investigation units. Information is shared through various means through specialized committees, and ad hoc ministerial committees, and the Joint Intelligence Board (JIB) which brings together heads of LEAs once a month to review and analyze security and crime patterns in the country.

Recommendation 28

265. The law enforcement agencies have power of search, seizure, and power to compel production of certain documents in the course of investigation or prosecution. They include:

- Financial records
- CDD information from financial institutions, other entities or persons through the "arrest and search warrant" and
- Court orders for the purpose of investigation, tracing, identification, prosecution, and confiscation of proceeds of crime.

266. This power is supported by Sections 28, 29, 35, 36, 37, 40, 41, 43 (2), 44 (1) (c) & 45 of the ICPC Act, 2000, sections 20 & 21 of MLP Act, 2004, sections 26 & 38 of the EFCC Act, and sections 4 (2) and 32 of the NDLEA Act. The Criminal Code and the Police Act also have similar provisions for investigation of predicate offences.

Structure, resources, integrity standards and training for law enforcement and prosecution agencies (Applying R.30)

Nigerian Police Force

267. The Nigeria Police Force (NPF) is under the authority of the Inspector-General of Police, whose office is established by the 1999 Constitution. Its responsibilities include: the maintenance of public order; the protection of life and property; the prevention of crime, the detection of crime, and prosecution of offenders. The Nigeria Police currently has 350,000 officers spread out across the country, who cover investigations and prosecution of cases ranging from misdemeanor to murder.

268. The NPF is empowered to arrest without warrant, to search any person or premises, including vessels, in order to detain, and to take finger prints of persons under investigation. It assists in the investigation of money laundering and terrorist financing through the operations of the Special Fraud Unit (SFU) of the Force Criminal Intelligence Department (FCID). As a member of INTERPOL, the NPF is obligated to act in all circumstances where matters affecting money laundering and terrorist financing are brought to its notice, in collaboration with other LEAs within or outside Nigeria.

269. The SFU was in charge of investigation of money laundering, corruption, financial crime and fraud related cases before the establishment of specialized agencies, such as EFCC, ICPC, and NDLEA. It is interesting to note that the first set of staff that assisted in setting up most of these other specialized agencies were drawn from the Police. While the police generally lack capacity to investigate these crimes, they have contributed in the training of new investigation officers and provided take off support required to establish the agencies. As noted earlier, 50% of the investigators working with EFCC are drawn from the Police.

270. No statistics was provided by the Police regarding their investigations on money laundering and terrorist financing. The assessors were also not able to obtain the list of training programs, and annual budget of the police force devoted to AML/TF matters.

NDLEA

271. National Drug Law Enforcement Agency Act CAP 253 LFN 1990 established the NDLEA. The NDLEA Act domesticated the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances after ratification by Nigeria. The main functions of the Agency are provided in Section 3 of the Act. Section 3 (c) and (d) provides that the Agency shall have responsibility for *"adoption of measures to eradicate illicit cultivation of narcotic plants and to eliminate demand for narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminating financial incentives for illicit narcotic drugs and psychotropic substances"*

272. The NDLEA therefore has statutory powers to enforce money laundering offences arising from illicit traffic in narcotic drugs and psychotropic substances in addition to the arrest, investigation and prosecution of persons involved in illicit drug trafficking. In order to achieve this, the NDLEA is vested with powers similar to those of the EFCC, but **limited only** to cases relating to laundering of proceeds of illicit traffic in narcotic drugs

and psychotropic substances. The Agency collaborates with counterparts in other countries both at bilateral and multilateral levels to fight money laundering.

273. The NDLEA has total staff strength of three thousand five hundred (3,500) personnel, operating in forty-seven command stations in 36 States and 11 Special Area Commands. The Directorate of Assets and Financial Investigation has the core responsibility for money laundering and has 25 personnel representing one percent of the total work force. Other units in the department are: Bank Operation, Data Processing, and Financial and Miscellaneous Investigation. The NDLEA has recently deployed between 3 and 5 officers per state, about a total of 150 to enhance its AML/CFT activities across the country.

274. **Prosecution and Legal Services:** The NDLEA has a prosecution and legal department which consist of Sixty-Two (62) prosecutors engaged in prosecuting drug and drug related offences. They also prosecute money laundering cases sent to them by the department of assets laundering along with money laundering predicate offences. These prosecutors are not specially designated for prosecuting ML offences only. No statistics were provided in relation to money laundering prosecutions. The statistics of conviction for drug trafficking offences between 2002 and 2004 (January to August) are as follows:

2002	**2003**	**2004**
875	815	818

Inspection visits to banks are conducted as follows:

- Routine bank inspections - twice annually per bank
- Special procedural investigation (based on data analysis/verification and intelligence gathering).

275. The assessors were informed that the NDLEA do not have adequate funding, and human and material resources to undertake its task. Additionally, lack of training in the designated area of work, and logistics constraints have hampered effective investigation and prosecution. They reported that steps are being taken by the agency to address the significant shortfalls in resources.

ICPC

276. The Corrupt Practices and Other Related Offences Act 2000 established the Independent Corrupt Practices and other Related Offences Commission (ICPC). The Act prohibits and prescribes punishment for corrupt practices and related offences. Section 6 of the ICPC Act provides for the duty of the Commission as follows: *"It shall be the duty of the Commission where reasonable grounds exist for suspecting that any person conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any such report."*

277. Sections 8 - 26 list different offences of corruption. The sanctions applicable to corrupt practices range from imprisonment terms of 3 to 7 years. Sections 38 - 39 as well

as Sections 45 - 49 empower the Commission to trace, seize, freeze, confiscate and forfeit all proceeds of corruption and related offences to the Federal Government of Nigeria. The ICPC operational strategy is based on three pronged approach, namely – systems study, prevention and enforcement.

278. The systems study unit works with government agencies to identify weaknesses in the government processes that make public officials vulnerable to corruption, and to develop strategies on how to prevent corrupt practices through training. The prevention unit disseminates information and education materials to the public on the adverse effects of corruption. The investigation unit carries out investigations and it is supported by the prosecution unit.

279. The Commission is expected to operate independently as the name implies and can initiate prosecutions independently. However, the Attorney General still retains the Constitutionally mandated fiat under section 174 (2) to supervise prosecutions initiated by the Commission. The Commission informed the Assessors that it is only obliged to report to the Nigerian public through the National Assembly once a year. The budget of the Commission is obtained directly through appropriation by the National Assembly.

280. The management of the Commission is made up of the Chairman, a Secretary and 12 Commissioners nominated from the 6 geo-political zones of the country. The roles and responsibilities of the Commissioners are not specified anywhere in the Act, however, they are expected to work with the chairman in the formulation of policies and drafting of operational guidelines for the efficient management of the Commission. As at October, 2007, the Commission had about 504 staff members, including 130 investigators and 42 prosecutors.

281. The staff members of ICPC have undergone training in various aspects of their work but most importantly, they have benefited from training on money laundering and asset forfeiture organized in Nigeria by the US Department of Justice, World Bank and the United Nations Office on Drugs and Crime. Officials of ICPC have also gone for training in Hong Kong, US and UK. The Commission is in the process of developing a training center that will provide training on various aspects of the Commission's work in the area of prevention of corrupt practices, asset seizure, financial investigation and prosecution. Training at this Center will be extended to everybody in the public service.

282. The ICPC management informed the assessors that their budget has increased significantly over the past two years and that they are now able to conduct investigations across the country without relying on other agencies as was the case prior to 2007. It has set up offices in 14 out of 36 states in the country. Personnel from these states' offices cover neighboring states where ICPC has not yet set up offices.

283. The ICPC has recorded increased output in its investigation and prosecution in 2006 and 2007 as opposed to the period from 2000 to 2005. The success recorded have been attributed to the appointment of a new management in 2006, the development of an investigation strategy, recruitment of skilled investigators and prosecutors, better

understanding of the dynamics of corruption in the overall governance framework of the country, and most importantly, improved collaboration with financial institutions and other law enforcement agencies.

284. Recently, ICPC prevented the illegal withdrawal of N2.6 billion Naira (approximately USD $22 million) from government treasury as a result of effective monitoring and application of the system review process to state government agencies. The Commission has powers to freeze and seize assets, which are proceeds of corrupt practice either on its own or through a court order. It is not clear how much the Commission has recovered through this process but the officials of ICPC informed the Assessors that the amount recovered is lodged in the bank and would be either forfeited to the government or returned to the accused depending on the outcome of the trial The ICPC reported that most of its work is domestic in nature.

285. ICPC complained about lack of cooperation in terms of sharing of intelligence from the NFIU. At the moment, there is no exchange of intelligence from NFIU to ICPC and vice versa. The assessors consider this a significant shortcoming.

286. The Commission reported that its greatest challenges lie in enhancing the skills of its core staff members, and overcoming obstacles associated with adjudication of corruption cases. At the moment, it takes an average of 4 to 5years to conclude a corruption case. There is no time limit and defense lawyers can apply for interlocutory injunctions and appeals at any time in the trial.

287. This is a significant shortcoming that may negatively impact in the ability of Nigeria to fully address the problem of PEPs. The ICPC seems to be unfamiliar with best practices notes on Politically Exposed Persons (PEPs) and have not developed any strategy to address the risks arising from PEPs in accordance with the FATF Recommendations. This is a significant deficiency in the country's efforts to address the issue of PEPs. In terms of cooperation, it was noted that the ICPC refers cases to EFCC and other agencies from time to time, and vice versa. The table below shows the number of cases received investigated and prosecuted in the past 7years by ICPC.

S/N	Year	No of cases reported	No of concluded investigations	No cases under prosecution from 2000	No of convictions from 2000	No of cases referred to EFCC
1	Jan – Oct, 2006	234	Not provided	131	9 (10 but 1 was overturned on appeal)	39
2	Jan – Sept 2007	99				
3	2000 -2005	538				
	Total	872				

DSS

288. The Department of State Security Service (DSS) was established by the National Security Agencies Act, Cap 278 LFN 1990, section 2(3)(a-c). *The responsibility of the agency include the prevention and detection in Nigeria of any crime against the internal security of Nigeria including the investigation of threat of espionage, subversion, sabotage, economic crimes of national security dimension, terrorist activities, separatist agitation and inter-group conflicts and threat to law and order".*

289. The DSS is the designated national focal point in the fight against terrorism. Its main focus in this area is to address the challenges of managing terrorism and extremism, which includes identifying terrorist groups and disrupting their sources of funds. In Nigeria, religious extremism is a major threat to the security and stability of the country.

290. The Director General of DSS is in charge of the day to day activities of the agency. It has offices in the 36 states of the country with headquarters in Abuja. An Anti-Terrorism Centre (ATC) is also located in all the state offices. Each state office is headed by a Director who collates information on terrorist activities, violent conflicts, civil unrest and religious extremism. The intelligence gathered are sent to the headquarters in Abuja for processing to determine which one requires further analysis and investigation. Where urgent response is required, the state offices would take immediate steps to address the problem.

291. The DSS cooperates with the NFIU and other law enforcement agencies internally to conduct investigation. It relies on Section 15 of the EFCC Act, the penal and criminal code in the enforcement of its mandate in the area of terrorist financing. In order to initiate international cooperation, and prosecution, it works with the Office of Attorney General.

292. The assessors were informed that the DSS requires additional human and material resources to be able to effectively deliver on its mandate of monitoring extremists all over the country. At the moment, training of staff on detection and identification of terrorist cells, groups and individuals is a critical need, which is yet to be fulfilled. In the past year, 25 cases related to terrorism and terrorist financing were investigated, 4 of which were still under prosecution. Some assets, which were traced to terrorists groups, have been seized, while the offices of extremists groups allegedly suspected of acting for international terrorists groups have been closed down.

293. Other challenges that the agency face include getting skilled prosecutors to present terrorist cases to the courts and also to get the judges to understand the dynamics of terrorism and terrorist financing, and especially its international dimension. None of the judges who currently hear these cases have been trained on the subject matter. Cases of terrorism and terrorist financing are treated as domestic crime which must be established as part of the Nigerian criminal law. Some of the cases that were filed in the court were struck out of the court list for not meeting the requirements of a properly defined offence under the Nigeria law.

The EFCC

294. The Economic and Financial Crimes Commission was established in December 2002 by the Economic and Financial Crimes Commission (Establishment) Act, 2002. The Act establishing the Commission was amended in 2004.

295. Section 6(b) and (c) of the EFCC Act empowers the Commission to be in charge of supervising, controlling, and coordinating all the responsibilities, functions and activities related to the investigation and prosecution of all offences connected with or relating to economic and financial crimes as well as the coordination of all existing economic and financial crimes investigations in Nigeria.

296. The EFCC has specific statutory powers by which it enforces money laundering and other economic and financial crimes as well as trans-national crimes. It has statutory powers to arrest, investigate and prosecute all persons involved in offences connected with or relating to economic, financial crime and money laundering. It is empowered to identify, trace, freeze, confiscate or seize proceeds derived from economic and financial crime and properties the value of which corresponds to such proceeds.

297. Aside from these special powers, the EFCC enforces specific money laundering offences, and engages in international collaboration both at bilateral and multilateral levels to combat money laundering and terrorist financing.

298. The Commission has the Chairman of EFCC as the Chief Executive Officer. The management of EFCC is made up of a 22-man board, with the Chairman and the Secretary to the board as the only permanent officers while the rest are adhoc members. The Board meets at least four times a year. The day to day operation of EFCC is managed by the Chief Executive Officer, the Secretary and the Heads of Departments.

299. The EFCC as at October, 2007 had about 1,300 staff, most of who were drawn from the Police and other law enforcement agencies. Out of that number, 70% are investigators, 5% prosecutors, and 25% administrative and support personnel. EFCC is generally described as one of the few well funded government agencies. From a budget of N500million Naira (approximately 3million Euro) in 2003, it is now receiving National Assembly appropriation of about N3billion Naira (approximately 17.5million Euro) per annum. It has also received significant support from international development agencies. In 2005, the European Union provided €25million Euro in development assistant to the EFCC and NFIU.

300. The Commission has established the following departments for the efficient implementation of its mandate,

(a) General Assets and Investigation ;
(b) Advance Fee Fraud
(c) Bank and Financial Fraud;
(d) Legal/Prosecution;
(e) The NFIU; and

(f) Administration and Finance;

301. The Commission's headquarter is located in the federal capital city, Abuja. 5 other operational offices are located in Lagos, Port Harcourt, Kano, Enugu, and Gombe. A Training and Research Institute for the Commission to train its personnel and those of other stakeholders on money laundering, corruption, terrorist financing, financial and economic crimes was set up in 2005. The training institute is managed by a Director. It has received assistance from US, and UK authorities.

302. The personnel of the Commission have been trained on the investigation and prosecution of financial crimes, money laundering, asset recovery and confiscation. Some of them have attended training in law enforcement agencies in the UK, US, Hong Kong, Australia, South Africa, and Japan.

303. The EFCC reported that it has recovered assets - cash and properties, worth 5.5billion US Dollars from 2004 to 2007, some of which have been disposed off through court orders. The number of money laundering cases under investigation and prosecution, including convictions, acquittals and cases compounded were not provided by EFCC.

Statistics on money laundering cases:

304. The EFCC reported that it has obtained 6 money laundering convictions.

Statistics of assets seized, frozen, confiscated and disposed off:

305. No information was provided with regards to assets seized or confiscated by the Commission.

The NCS

306. The Customs and Excise Management Act, CAP 84 (LFN 1990 (CEMA) established the Nigeria Customs Service (NCS). Under Section 4 of CEMA, the Nigeria Customs Service is charged with the duty of controlling and managing the administration of the Customs and Excise laws. It is also mandated to collect the revenue generated from Customs and Excise and account for same in such manner as may be directed by the Minister for Finance.

307. The Nigeria Customs Service is responsible for implementing Government's fiscal policies as they relate to the import and export regime. It is the responsibility of the NCS to examine imports and exports into and out of the country. It has powers to regulate the operations at the sea and airports, restrict the movement of goods into and out of Nigeria by land, water-ways and by air, and to board, examine and inspect any ship or aircraft bringing goods into the country or taking goods out of the country.

308. The Comptroller-General of Customs is the head of the NCS. He is assisted by three Deputy Comptrollers-General in charge of the three main departments: Corporate

Services (COSER); Revenue and Enforcement; and Investigation and Inspection (E, I & I). The NCS has staff strength of 15,000. However, most of the current personnel are being disengaged to enable NCS hire and train new crop of officers on modern investigation tools. The NCS have not recruited new officers for more than 15 years.

309. The Assistant Comptroller-General (ACG) at the Headquarters is in charge of the Central Intelligence Unit (CIU). This Unit is charged with the responsibility of collating intelligence and information bordering on financial crimes, import-export trade malpractices and monitoring the implementation and enforcement of the Customs and Excise Management Act, government's regulations on financial crime related to the functions of the NCS.

310. This Unit complements the Revenue Department, which enforces the provisions of the MLPA & EFCC Act on cash declarations required under S.12 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995. This is the declaration made to the NCS in relation to monies above $5,000 brought in or taken out of Nigeria. Under S.6 (o) of the EFCC Act, 2004, the NCS liaises with the EFCC in the eradication of financial crimes.

311. To maintain a dependable intelligence database for information as it relates to the movement of cash in and out of the country, a *"mandatory cash declaration form"* was introduced recently across at all the international airports. NCS is undertaking activities to disseminate information to travelers about the new declaration form and to ensure the availability of the forms at the various entry points.

312. The NCS has developed a data based on cash declarations and is now working closely with the NFIU. Information on cash declaration STRs are forwarded to the NFIU for analysis and NCS may restrain cash or persons involved in cash smuggling pending the outcome of investigation. The NCS does not have criminal prosecution powers under the CAMA and relies on EFCC and the Attorney General for the prosecution of money laundering related cases.

313. The NCS requires training and more staff with analyst skills in order to be able to execute its task of detecting cash smuggling. The Customs authorities informed the assessors that it does not have enough vehicles to cover all the borders in Nigeria. Additional computers and trained investigators are required to enhance its capacity. Since the commencement of declaration of cash at the point of entry, NCS has forwarded 350 cases to NFIU and 45,000 STRs for review and analysis.

<u>Attorney General and Minister for Justice and the DPP Office</u>

314. The Ministry of Justice has the Attorney General (AG) and the Minister for Justice as the Chief Executive Officer. The Ministry has a central office in Abuja and zonal offices in Lagos, Port Harcourt, Maiduguri, Kano, Enugu and Jos. As the Chief Legal Officer for the country, the AG can nominate anybody within his Ministry to represent him in any matter before the court.

315. The AG's prosecution power has been devolved to EFCC, NDLEA, ICPC, and Police, particularly in the area of corruption and money laundering. The Attorney General, within his remit can take over any case commenced by EFCC or any other agency. The Ministry of Justice staff members have not been trained in the prosecution of money laundering cases.

316. The core function of the Ministry of Justice in the enforcement of AML/TF measures is in the negotiation of bilateral and multilateral agreement, fostering international cooperation and providing mutual legal assistance and responding to extradition requests. The Ministry does not have the human and material resources to undertake these tasks. The assessors were informed that more lawyers will be hired and trained in 2008 to support the work of the international law and the legal drafting departments.

Statistics (applying R.32)

317. The Nigerian authorities reported that there were several cases of money laundering under investigation, and prosecution. They also reported that they have obtained several convictions in high profile cases related to money laundering. Statistics are not centralized and therefore it is often difficult to determine the total number of money laundering and terrorism and terrorist financing cases that are either under prosecution or that had been investigated.

Additional elements:

318. The EFCC, as the core agency responsible for coordinating and investigating money laundering cases is considered to be adequately staffed with a full-fledged investigation unit made up of about 600 investigators. EFCC staff members have received specialized training. However, training is required in areas such as asset tracing, forfeiture, confiscation and terrorist financing.

319. NDLEA has a Regional Academy for Drug Control where officers are provided with basic and refresher training courses on narcotic control and anti-money laundering. The EFCC have also set up a Training and Research Institute and staff are being trained and retrained on specialized investigation tools.

2.6.2 Recommendations and Comments

Recommendation 27

320. Nigeria has competent authorities with the mandate to investigate and prosecute money laundering. The investigation authorities can and do have adequate legislation that empower them to waive, and postpone arrests, investigation and prosecution of suspected persons in order to determine those involved in the commission of a crime.

321. However, this is not the case with regard to terrorist financing. The assessors noticed that the law is unclear regarding whether the DSS, EFCC or the Attorney General's Office should prosecute terrorist financing cases. The EFCC claims that it has the legal mandate to investigate terrorism and terrorist financing, while the Attorney General argues to the contrary.

322. Nigerian criminal law and ML/TF legislation should be revised to include the clear and unambiguous legal framework for the investigation and prosecution of terrorism and terrorist financing related offences in Nigeria.

323. It is hoped that the anti-terrorism bill currently before the National Assembly will address this shortcoming and strengthen the current legal framework in this regard.

Recommendation 28

324. The law enforcement agencies have powers of search, seizure, and power to compel production of certain documents in the course of investigation or prosecution. They can also take witness statements for use in investigations and prosecution of ML/TF cases and other crimes.

Recommendation 30

325. The assessors were also not able to obtain the list of training programs, and budget of the police force devoted to AML/TF matters, which limited the assessor's overall evaluation of the Police's operational efficiency and effectiveness.

326. ICPC is not aware of best practices notes on PEPs and has not developed any risk assessment strategy on PEPs. Additionally, there is no ongoing exchange of intelligence between the ICPC and the NFIU. Both of these shortcomings have a detrimental impact on the overall effectiveness of the investigation and adjudication of cases in general, which the assessors consider to be a significant shortcoming.

327. The assessment team observed that due to the limited skills of judges and prosecutors, the prosecution of corruption cases is ineffective as it takes an average of 4 to 5 years to conclude a single corruption case. Furthermore, there is no time limit defined by law concerning the maximum length a case may remain open, and defense lawyers can apply for interlocutory injunctions and appeals at any time during the trial.
342. This is a significant shortcoming that has negative impact in the ability of Nigeria to fully address the problem of PEPs in particular and corrupt officials in general.

328. The assessors noted that the NDLEA lacks adequate funding, as well as human and material resources to undertake its task. Consequently, these constraints have hampered the NDLEA's effectiveness in conducting investigations and prosecution of money laundering offences, which limits Nigeria's overall level of compliance with this recommendation.

329. The assessors understand that the DSS requires additional human and material resources to be able to effectively deliver on its mandate of monitoring extremists all over the country. DSS staff has not received adequate training on the detection and identification of terrorist cells, groups and individuals. Additional limitations include, lack of skilled prosecutors to present terrorism related cases to the courts, as well as judges who understand the domestic and international aspects of terrorism and terrorist financing. None of the judges who currently handle these cases have been trained on this subject matter, therefore terrorism and terrorist financing related cases continue to be treated as domestic crimes.

Recommendation 32

330. No statistics were provided by the Police regarding their investigations on money laundering and terrorist financing.

331. Statistics are not centralized and therefore it is often difficult to determine the total number of money laundering and terrorism and terrorist financing cases that are either under investigation or prosecution in Nigeria by law enforcement agencies.

332. The authority is advised to centralize the system for collation of ML/TF prosecution, investigation, and convictions. Additionally, they should collate and maintain statistics related to the assets seized, frozen, and confiscated, including the amount involved in relation to all ML/TF cases. EFCC and NFIU should be empowered to implement their responsibilities in this regard as provided in the EFCC Act.

2.6.3 Compliance with Recommendations 27 and 28.

	Rating	Summary of factors underlying rating
R.27	LC	• The law does not clearly state whether the EFCC, DSS or the Attorney General is the proper authority responsible for prosecuting terrorist financing cases. • Specialized training is not available across all the LEAs and judicial bodies on ML/TF issues.
R.28	C	

*Ratings for R.30 & 32 are discussed under section 7.

2. 7 Cross Border Declaration or Disclosure (SR.IX)

Special Recommendation IX

2.7.1 *Description and Analysis*

Declaration system

333. To detect the physical cross-border transportation of currency and negotiable instruments, Nigeria adopted a declaration system for all persons entering or leaving Nigeria in possession of currency and bearer negotiable instruments in excess of $5,000 or its equivalent. The legal framework can be found in Section 12 (2) Foreign Exchange Monitoring and Miscellaneous Provisions Act (FEMMP) Act 1995, Section 2 (3) MLP Act, 2004 and Section 236 of Customs and Excise Management Act (CEMA) (No 55 of 1958 now Cap 45 Laws of Federation of Nigeria, 2004). However, the legal framework does not specify that "bearer negotiable instruments" should be declared as required by SR IX.

334. Section 12 (1) & (2) of the FEMMP Act provides that *"No person shall be required to declare at the port of entry into Nigeria any foreign currency unless its value is in excess of US $5,000 or its equivalent. Foreign currency in excess of US $5,000 or its equivalent, whether being imported into or exported out of Nigeria, shall be declared on the prescribed form for reasons of statistics only"*. Section 2 (3) of the MLP Act provides *that " the Nigerian Custom Service (NCS) shall report any declaration made pursuant to section 12 of the FEMMP Act to the Central Bank who shall in turn forward it to the Commission." Foreign currency is defined under the interpretative section to mean any currency other than Nigerian currency.*

335. While the Nigerian law does not specify whether physical border includes transportation by means of shipment through containerized cargo or by mail, the authorities stated that it does not matter the means by which the cash is transported.

336. The Revenue department of the NCS is responsible for the enforcement of the provisions of the MLP Act & EFCC Act on cash declarations required to be recorded under S.12 of the FEMMP Act. The Customs Intelligence Unit (CIU) complements the work of the Revenue department in the NCS and is charged with the responsibility of gathering intelligence on financial crimes, import-export trade malpractices, and monitoring of the implementation and enforcement of the Customs and Excise Management Act.

337. To maintain a dependable intelligence database for information on the movement of cash in and out of the country, the mandatory cash declaration form has been introduced at international airports and at major borders across the country. NCS in

consultation with NFIU have developed form CDFI (A) and CDFI (B) which can be filled by all incoming and outgoing travelers at the airport.

Stop and seizure powers

338. NCS is mandated by law to detect, stop or restrain physical cross-border transportation of currency, to ascertain whether evidence of money laundering or terrorist financing may be found. Under Sections 71 to 74 and 161 of the CEMA, NCS can request further information on the origin and intended use of the transported funds and negotiable instruments found on a traveler. The EFCC works closely with the NCS in the detection and enforcement of cash declaration regime. All information generated by NCS is retained in NCS's data base for use by law enforcement agencies and the NFIU.

Submission of STRs to NFIU

339. The MLP Act, 2004 requires NCS to send STRs to the NFIU.

Domestic and international cooperation

340. At the domestic level, there is ongoing information sharing and cooperation with EFCC and NFIU. International cooperation framework involves the participation of NCS in the meeting of the World Customs Union.

Sanctions

341. Sections 29 & 30 of the FEMMP Act does not cover offences related to carrying cash in excess of the prescribed $5,000 USD. No penalty is applicable for non-declaration under the FEMMP Act. However, the authorities report that the person can be prosecuted and all the instrumentalities used in the commission of the offence forfeited to the Federal Government under sections 161, 167, and 169 of the CEMA which provide for freezing, seizure, and forfeiture of currencies or bearer negotiable instruments. NCS is also relying on the powers of EFCC and the Ministry of Justice in the enforcement of money laundering, and financial crime and therefore EFCC may commence prosecution on behalf of the government when there is a breach of the CEMA and FEMMP Act given its broad mandate on asset forfeiture and confiscation.

342. NCS has civil prosecution powers and can apply sanctions such as fine and retention of such cash and instrumentalities under certain circumstances. Confiscation can be either through a court order or through direct forfeiture where the owner fails to provides reasonable justification regarding the source or origin of the seized property. There is no legal framework that explicitly covers the declaration and movement of precious metal, stones, and jewelry.

Statistics (applying R.32)

343. NCS does not maintain comprehensive statistics at the moment. They are however trying to develop a database that will enable them to capture all information received from different parts of the country. Information generated from Abuja, Lagos, and Kano seems to be well documented but not so for the rest of the country. NCS is still trying to recruit and train staff that will handle disclosure at different ports of entry in the country.

2.7.2 Recommendations and comments

344. NCS has metsome of the criteria under SR IX but there are some aspects that require further implementation. While the FEMMP Act and CEMA do not provide adequate and dissuasive sanctions for non-declaration or false declaration, sanctions are provided in the EFCC and the MLP Act. NCS can detain cash seized from smugglers and can also work with EFCC to prosecute suspects for non-declaration of cash in excess of $5,000 US Dollars. The authorities should ensure that a comprehensive sanction regime is included in the CEMA.

2.7.3 Compliance with Recommendations IX

	Rating	Summary of factors underlying rating
SR.IX	PC	• The system does not specifically cover bearer negotiable instruments, (BNI) or currency and BNI transported through containerized cargo or by mail. • NCS does not cover the country's port of entries and as such a significant amount of travelers are not covered under the declaration system. • NCS staff members are not well spread out and still lack the requisite skills to manage the data base for the declaration system. • There are currently no specific sanctions for failure to declare or for making a false declaration.

3. PREVENTION MEASURES – FINANCIAL INSTITUTIONS

Overview of legal and regulatory framework

345. The legal framework for preventive measures is applicable to all the financial institutions, which include the banking, insurance and capital markets/securities sectors. Each supervisory authority has an applicable legislation and regulation which provides guidance to institutions in the finance, insurance and capital markets. The Central Bank of Nigeria (CBN) is responsible for supervising banks; the National Insurance Commission (NAICOM) is responsible for regulating insurance companies; and the Securities and Exchange Commission (SEC) is responsible for overseeing the capital market operations in Nigeria.

Banking Sector

346. In 2003, the Central Bank of Nigeria, the body responsible for regulatory oversight of Nigeria's financial institutions, issued the Know Your Customer (KYC) Directive to all financial institutions (FIs), which provides guidance to FIs for determining the true identity of its customers. The CBN's KYC Directive and Money Laundering Examination Procedure/Methodology Guidance Note both provide procedures for ensuring that FIs do not maintain anonymous accounts, particularly accounts with foreign transaction activity. However, there is no legal provision in the law that prohibits the opening and maintaining of anonymous accounts.

347. Section 3 of the Money Laundering and Prohibition (MLP) Act of 2004 requires proof of customers' identities, but does not explicitly state that anonymous or numbered accounts are or numbered. According to Paragraphs (v) and (xii) of the KYC Directive, FIs are required to obtain and maintain records of all account activity for a minimum of ten years, and conduct ongoing monitoring of their customers' account activity for any unusual or suspicious transactions.

348. The CBN Money Laundering Examination Procedure/Methodology Guidance Note details the required information that FIs must obtain from customers to verify their identity. For individual customers, FIs are required to obtain complete required CDD information before an account can be opened, and includes obtaining a copy of the person's national identification card, full address (no P.O. boxes allowed), date of birth, and at least two references.

349. The FIs are further required to contact the named references. Each FI would then conduct onsite visits to the customer's place of address to verify the information provided by the customer. For a customer that is a registered company, FIs are required to verify the entity's identity and legal status before an account can be opened, which includes conducting a name and registry search with the Corporate Affairs Commission's (CAC) database of registered companies and corporate entities.

350. In the case of an agent operating an account on behalf of a third party, the Banks must ensure that the identity of the person purporting to act on behalf of the customer has been properly verified by the FI. If FIs detect any type of suspicious activity or person in the course of their business, they are required under Section 6 (2) (c) of the MLP Act to report such cases promptly to the Nigerian Financial Intelligence Unit (NFIU). Where an FI fails to observe the prescribed rules relating to KYC, and risk monitoring, relevant sanctions will apply.

Insurance Sector

351. The MLP Act of 2004 defines insurance companies as financial institutions that are required to comply with AML/CFT measures. NAICOM, the regulatory authority responsible for oversight of the insurance sector, is in the process of reviewing its existing regulatory framework to ensure compliance with AML/CFT requirements. The NAICOM reviewed and revised the Insurance Industry Policy Guidelines (IIPG) of 2004, Customer Due Diligence (CDD) and Know Your Customer Guidelines (KYCG) for insurance companies in order to ensure greater conformity with the provisions of the MLP Act.

352. The KYCG provides insurance institutions with guidance on the following: (1) verification procedures for determining the identity of their customers, (2) measures for recognizing suspicious type transactions; and (3) record-keeping requirements as prescribed by Sections 17, 18, 42 and 47 of the Insurance Act of 2003. The IIPG and the KYCG are meant to complement the information contained in insurance proposal forms and other relevant provisions of the insurance laws and regulations. NAICOM has also undertaken a review of its Inspectors' Operational Manual and has specifically highlighted ML/FT areas that will be regulated by NAICOM inspectors, who received some preliminary training on AML/CFT examinations from the Economic and Financial Crimes Commission (EFCC) in February 2005.

Capital Markets Sector

353. Rule 100 of the SEC Rules and Regulations made pursuant to the provisions of the Investment and Securities Act (ISA), 1999 require capital market operators to obtain proper customer identification information before entering into a business relationship. SEC is currently reviewing its existing laws and regulations in order to improve the adequacy of the provisions made in the ISA, as well as to ensure compliance with FATF standards. In particular, a new Rule 100 of the ISA was developed in 2005 that explicitly states the procedure that the capital market operators must follow when determining their customers' identity. In addition, SEC is developing an operational manual for brokerage institutions that will provide guidance on the following: (1) procedures for verifying a customer's identity; (2) measures for detecting suspicious type transactions; and (3) proper record-keeping requirements in line with the provisions of the Rules and Regulations of the ISA.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering and terrorist financing

354. The current application of Nigerian AML/CFT measures to the financial system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations. The authorities advised that the broader concept of risk for both financial institutions and government agencies is still being developed. The evaluation team noted Nigeria's desire to implement a risk-based approach, through risk identification and monitoring.

355. The Nigerian Financial Intelligence Unit (NFIU) is working on a risk matrix in order to identify those areas within the financial sector that would require increased supervision. Additionally, the Central Bank of Nigeria (CBN) intends to train officers in the supervision department on how to properly conduct risk-based supervisory exams on financial institutions. Once the concepts of risk identification and monitoring have been fully developed, the evaluation team would expect Nigeria to effectively implement all the FATF CDD requirements.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Anonymous accounts and fictitious names – numbered accounts

356. FIs covered by the MLP Act, ISA, SEC Rules and Regulations, and the Insurance Act are required to identify customers and beneficiaries, and prohibit the opening and maintenance of fictitious accounts in financial institutions under the law. Specifically, Section 3 of the MLP Act, 2004 requires proof of customers' identities. Further, Sections 14(1) (b) and 15(1) (c) of MLP Act, 2004, Sections 74 and 75 of the Investment and Security Act (ISA) 1999, Rule 177 of the Securities and Exchange Commission (SEC) Rules and Regulations, and Sections 17, 18, 19, 42, & 88 of the Insurance Act, 2003 all prohibit the opening and maintenance of fictitious accounts in financial institutions.

357. Financial institutions informed the Assessors that they are prohibited from opening fictitious or anonymous accounts under Paragraph (i) of the Central Bank of Nigeria's Know Your Customer Directive, 2001 (CBN KYC), which is a regulation recognized as an enforceable document under Nigerian legal system. Representatives from financial institutions informed the evaluation team that numbered accounts are not opened as a matter of practice, although this is not explicitly prohibited by law in neither the MLP Act nor the Insurance Act.

358. CBN's Money Laundering Examination Procedure/Methodology Guidance Note provides the procedure for ensuring that FIs do not maintain anonymous or fictitious accounts for foreign and local transactions, however a copy of this guidance was not provided while the team was onsite. Representatives from the banking industry stated that they maintain some safe deposit boxes for their customers, and follow customer due diligence (CDD) requirements as stated in Section 24 (j) of the Money Laundering Prohibition (MLP) Act.

When CDD is required

359. The financial institutions informed the evaluation team that CDD measures for new customers are undertaken at the time of account opening. As required in the Know Your Customer (KYC) Manual section 2.2.1, FIs must obtain the following information when trying to establish identity: 1) one form of government issued photo identification that may include a driver's license, national identification card, or a passport; 2) date of birth; and 3) residential address. A corporate entity, under MLP Act Section 3 (3), is also required to provide "proof of identity by presenting its certificate of incorporation and other valid documents attesting to the existence of the corporate body."

360. For trusts, FIs are required to "obtain and verify the identity of those persons providing funds for the Trust, i.e., the settler(s), and those who are authorised to invest or transfer funds, or make decisions on behalf of the trust, i.e., the principal trustees and controllers who have power to remove trustees" (KYC Manual 2.5.6).

361. Section 3(1) of the MLP Act requires financial institutions to "identify customers before opening an account, issuing a passbook, entering into a fiduciary transaction, renting a safe deposit box, or establishing any other business relationship with the person." These same CDD requirements also apply to customers of Bureaus de Change (BDC), who maintain an electronic database of all their customers' CDD information, although verification of this information is lacking. The Nigerian government is currently working to put in place preventive measures to help circumvent the falsification of national identification.

362. The threshold for cash transaction reporting in Nigeria is USD 5,000 or its equivalent, which is lower than the FATF standard of USD 15,000. This threshold also applies to both domestic and foreign wire transfers. While this covers identification of occasional transactions for cash, it does not cover occasional transactions that are non-cash and above the threshold. However, for occasional transactions that are wire transfers, Paragraph 9.2.1 of the KYC Manual recommends setting a reporting threshold "significantly lower" than USD 5,000, but there is no further guidance to tell FIs what exactly that lower reporting threshold should be. Furthermore, Nigerian regulatory authorities did not appear to be aware of the FATF standard of USD 1,000 for one-off wire transfer transactions, and were unable to cite a reference illustrating that a lower threshold for occasional wire transactions exists.

363. Furthermore, Nigerian regulatory authorities did not appear to be aware of the FATF standard of USD 1,000 for one-off wire transfer transactions, and were unable to refer to a regulation illustrating that a lower threshold for occasional wire transactions exists. Financial institutions are required to perform CDD when there is a suspicion that the *proceeds* are from any illegal act under Section 3(6) of the MLP Act; however, this does not cover when there is a suspicion of FT. Also, there is no requirement to identify customers when the financial institution has doubts about the previously obtained customer identification data.

364. The MLP Act 2004 requires that cash transaction reports (CTRs) over the threshold be filed with the NFIU. In practice, the evaluation team noted while most FIs were correctly filing CTRs when necessary, other FIs were filing CTRs incorrectly. Specifically, representatives from the banking industry told the evaluation team that CTRs were filed not only for transactions that were above the reporting threshold, but also for some transactions that fell below the threshold.

365. The reason for this incorrect reporting as explained to the evaluation team is due to the banks' increased sense of obligation to provide reports to regulators regardless of the transaction's adequacy in order to illustrate the banks' ongoing compliance with due diligence requirements. In addition, the evaluation team noted that FIs were filing CTRs in a broad manner, even in some instances where an STR may have been more appropriate. For this reason, the evaluation team was of the impression that most FIs did not have a clear understanding of how to determine suspicious type of activity, or the significance of incorrect CTR reporting upon the effectiveness of the overall AML system.

366. In the insurance sector, the National Insurance Commission (NAICOM) has issued a Know Your Customer Guideline (KYCG) for the sector that mirrors the CBN KYC Manual issued for banks. An applicant for insurance is required to complete a proposal form, which is analysed to ensure that all identification information has been obtained. If a client fails to provide all the required identification information to the insurance company, then a 24-hour time limit is imposed before the account is closed.

367. In the capital market sector, Rule 100 of the SEC Rules and Regulations provides for the minimum identification information required for domestic investors, and Rules 210-212 provides for the minimum information required for foreign investors coming through the securities market. Only accounts with complete customer identification information are permitted to be opened and maintained. For those customers who have not provided all the required identification information, the securities agent can still perform transactions in the client's account. However, the client cannot reap any profits or other benefits derived from the account until all required CDD information has been obtained.

Required CDD Measures

368. The procedures used by FIs to verify their customers' identity are stated in Paragraphs 4.2 and 4.3 of the KYC Manual and include obtaining copies of utility bills from the last three months, performing onsite visits, and contacting the references supplied by the customer, which are typically two or three non-related individuals.

Legal persons

369. For corporate entities, FIs obtain the following additional identification information: originals or certified copies of the articles of incorporation, the entity's registration number; the name in which the corporation is registered and any trading names used; the registered address and any separate principal trading addresses; its directors; the owners and shareholders; and the nature of the company's business.

370. For trusts and legal entities, FIs require certified copies of the legal mandate that establishes the trust or entity and names those individuals who are beneficiaries to the account. For each beneficiary named in the trust or legal entity, FIs ensure that they obtain the required identification information. Among the BDCs, however, agents obtain and maintain an electronic database of the required CDD information from their customers, but do not typically verify this information.

Beneficial Ownership

371. Beneficial ownership is not clearly defined in the AML legislation. Section 3 (7) of the MLP Act was referenced as the mandate that requires FIs to seek information from customers as to their true identity if it appears that a customer may not be acting on his or her own account. Regulatory authorities stated that most FIs rely on self-disclosures by the customers at the time of account opening in order to determine the identities of all the named individuals that are beneficial owners or have ultimate control over the funds in an account. There is no clear obligation to identify and take reasonable measures to verify the beneficial owner for all customers, including determining whether the customer is acting on his/her own behalf, understanding the ownership/control structure of the legal entity, and determine the natural persons who exercise ultimate control over the entity.

372. The FIs have not received any clear guidance from the regulatory authorities that defines beneficial ownership; however, representatives from the banking industry noted that they require customers who are either acting on their own behalf or on behalf of another person to provide complete identification information at the time of account opening.

Purpose and intended nature of business relationship

373. Paragraph 1.2 of the KYC Manual requires FIs to obtain the purpose and nature of business that the customer intends to undertake before commencing a business relationship. In the insurance and capital markets sectors, it was unclear if beneficial

ownership information was being obtained for all individuals who may have some ownership or control over the funds in an account. The types of information that FIs typically collect include: the stated purpose and reason for opening the account; intended nature of the account activity; expected origin of funds; source of wealth or income; and description of the customer's occupation, employment, or business activities.

Ongoing due diligence measures

374. There is no clear requirement to conduct ongoing due diligence on the business relationship. However, representatives from the banking and security industries stated that they conduct regular reviews of their customers' account activity to ensure that it is consistent with the account's intended purpose, and that the customer's information is current. The frequency of these reviews is determined by each financial institution, and may occur on a weekly, monthly, quarterly, or annual basis.

375. While FIs ensure that they maintain updated CDD information on their customers, the quality of their regular reviews is uncertain since FIs have not received sufficient guidance to help them distinguish among the various levels of risk (the team notes that Nigeria is currently conducting a risk assessment). The assessment team was also unclear to what extent the insurance sector has implemented ongoing due diligence measures for its clients, as representatives from this sector informed the team that not all insurance company branch offices have fully enforced ongoing due diligence procedures.

Risk

Enhanced due diligence

376. Nigeria is still in the early stages of conducting a risk assessment to determine various categories of risk. As such, those customers, business relationships, and transactions that pose high risks are yet to be determined. Although there is no clear definition of "high risk transaction categories" provided in any guidance or legislature, there is a legal requirement for FIs to perform enhanced due diligence procedures for such customers in Paragraph 6.4 of the KYC Manual.

377. **Legal Persons or arrangements such as trusts that are personal assets holding vehicles:** The additional CDD procedures provided in Paragraph 6.4 of the KYC Manual include: obtaining a copy of financial report, Board resolution, and the Memorandum and Articles of Association of the company; obtaining and verifying the identity of those who have ultimate control over a company and its assets, beneficial owners, and non-signatories to the account; conducting onsite visits; and determining the reasons behind any unusual or suspicious account activity.

378. **Private banking and companies that have nominee shareholders or shares in bearer forms:** Nigerian banks do not offer certain types of service, specifically, private banking or business relationships with companies that have nominee shareholders or shares in bearer form, which helps limit the banks' exposure to some AML/CFT risk.

However, if Nigerian FIs decide to expand the array of their services provided to customers, it will become essential to have clear guidance on proper enhanced CDD measures, as well as a clear definition of "high risk" factors.

379. **Community banks:** Community banks, in particular, will require more scrutiny of high risk type accounts and enhanced CDD measures upon completion of the planned consolidation (scheduled for December 2007), as their capital base requirement will increase from USD 5 million to USD 25 million. With a larger capital base, community banks will be exposed to higher levels of AML/CFT risk, and must ensure that they have the necessary measures and proper systems in place to mitigate this risk. Both the insurance and securities sectors possess a moderate level of AML/CFT risk exposure currently, although, it is expected that their risk management systems will require more enhanced scrutiny as Nigeria's investment in security and insurance products continues to grow in the future.

380. While Nigeria has a requirement for FIs to give consideration to high risk and risk factors in general, little guidance has been provided regarding what would constitute a high risk transaction or customer. The evaluators were unconvinced that Nigerian regulatory authorities have advised banks and other FIs sufficiently on risk, as representatives from various FIs with whom the evaluation team met showed little knowledge of risk in general.

381. Measures and procedures for determining and managing risk are still in the very early stages of development, and there appears to be an over-reliance on banks to perform a risk assessment on their customers. Further, based on discussions with Nigerian regulatory authorities, there seems to be little consideration given to the Basel Committee on Banking Supervision's report on Customer Due Diligence for Banks (the Basel CDD paper). As Nigerian banks currently work to develop a proper risk-based approach and procedures, it would be useful to follow the guidance provided in the Basel CDD paper to ensure that their practices comply with the FATF standard.

Reduced due diligence

382. Paragraph 9 in the KYC Manual states three specific instances when FIs may be exempted from obtaining customer identification information and include: (1) applicants that are Nigerian financial institutions; (2) one-off transactions such as cash remittances and wire transfers (either inward or outward); and (3) reinvestments of income as a result of the proceeds derived from a one-off transaction. These are overly broad as they are focused on exemption, rather than merely simplified or reduced due diligence. However, Nigerian authorities and representatives from the banking, insurance, and security industry noted that they require all their customers to provide complete CDD information without exception, regardless of the legal provision stated in the KYC Manual.

383. Representatives from each financial sector with whom the evaluation team met reported that reduced or simplified CDD measures are not applied to any customer for any reason as a matter of practice. For instance, when there is a suspicion of money

laundering, terrorist financing, or other high risk scenario, financial institutions are not permitted to apply simplified CDD measures, but rather require complete identification information from the customer as required by Section 3 (6) of the MLP Act.

384. Some additional due diligence measures are provided for in Paragraphs 4.6 and 4.7 of the KYC Manual when dealing with non-resident customers, legal persons or arrangements, and companies. FIs typically will not establish a business relationship with these types of customers unless an initial face-to-face contact has been made. Simplified or reduced CDD measures would also not be applied to these types of customers.

385. Further, since FIs have not yet implemented a risk-based approach, they are not in a position to determine the extent of necessary CDD measures required for certain businesses with potential risks. Once Nigeria's risk assessment procedure is established, the team would expect that FIs would apply appropriate CDD measures and risk monitoring procedures that are commensurate with the risks in the sector and consistent with FATF guidelines.

Timing of Verification

386. Before entering into a business relationship or conducting any type of transaction, FIs are required under Sections 3 (1-5) of the MLP Act to verify the identity of all customers and beneficiaries, whether they are individuals, corporations, or legal entities. In the banking sector, customers are required to provide CDD information at the time of account opening.

387. In the insurance sector, a 24-hour time limit is imposed for customers to provide any missing or incomplete CDD information; otherwise, the account is closed and the initial deposit is returned to the customer. In the capital market sector, customers who have not provided all the required identification information at the time of account opening can still conduct securities transactions. However, the customer cannot reap any profits or other benefits derived from the account until all required CDD information has been obtained by the securities agent.

Failure to Complete CDD

388. Sections 3(1) and 6(2) of the MLP Act state that FIs shall not enter into a relationship with a customer if all the CDD requirements have not been met. Representatives from the banking industry stated that they will neither accept any deposits nor conduct any services for a customer until all CDD information has been provided.

389. Paragraph 2.7.3 of the KYC Manual further stipulates that in instances where a customer fails to provide complete identification information, the FI should close the account and consider filing an STR. While an account is typically inactive or closed by FIs for failure to provide complete CDD information, most FIs do not consider filing an STR in these instances.

390. In the capital market sector, it was not clear what time limit is imposed by security companies before closing an account for incomplete CDD information. The team was informed that any profit derived from trades on that account would be held under the agent's custody until the customer provides all the missing CDD information; otherwise the profit would remain in a "suspended account" while the initial deposit is returned to the customer.

Existing Customers

391. Both regulatory authorities and representatives from the banking sector with whom the evaluation team met stated that their records for all existing customers have been reviewed to ensure that all required identification information is in the file. For accounts with missing information, the banks stated that they would contact the customer and request the necessary information. Regular reviews of customer accounts are conducted at a minimum, annually to ensure continued compliance with CDD requirements. This seems to be a practice rather than a legal requirement and may not necessarily be based on assessments of risks posed by existing customs. However, upon implementation of a fully developed risk-based approach, banks noted their intention to conduct more frequent reviews on those accounts that have a high risk rating.

392. In the security sector, it was unclear to the evaluation team if security agencies have actually reviewed their existing customers' records to ensure that all required CDD information have been obtained and filed. In the insurance sector, representatives from an insurance company noted that their existing customers' accounts were not being updated regularly to ensure that CDD information is accurate. In fact, the evaluation team was informed that the insurance company was aware that several of its branches had not undertaken a review of its existing customers' records to ensure that all required CDD information is on file.

393. According to Section 3.2.1 in NAICOM's KYC Guidelines, insurance companies are required to "ask the customer to confirm the relevant details and obtain any missing KYC information," particularly in cases where there has not been any contact or correspondence with the policyholder within the past six months.

Recommendation 6

394. There is no requirement in Nigerian law that relates to politically exposed persons (PEPs). There is lack of clarity regarding the definition of PEPs. This has negatively impacted on the overall effectiveness and implementation of this Recommendation.

395. An attempt has been made by the regulatory authorities to provide guidance on PEPs, as reflected in a Communiqué that was recently issued by the CBN. The Communiqué contains a list of recommendations for future action that the CBN should take in order to increase the effectiveness of its risk management system. Two of the recommendations in the Communiqué refer to PEPs and states the need to: (1) establish a

proper definition of PEPs and extend the definition and period of PEPs' declassification by the CBN/NFIU; and (2) create a PEPs database to assist operators when establishing customer relationships. However, no definition of PEPs was provided according to FATF standards. Since the communiqué is the report of the key decisions taken at a workshop, it does not have any legal basis and as such has not been widely disseminated.

396. The CBN KYC Directive made reference to enhanced CDD measures that should be taken for a customer that is PEP. Specifically, Section ix of the KYC Directive states that FIs should investigate the source of funds before accepting a customer who is PEP, and that the decision to open such accounts would require senior management approval.

397. In practice, representatives from the banking industry stated that senior management approval is indeed taken for customers who are PEPs before an account can be opened. However, there is no guidance that states what enhanced CDD measures FIs must take for those customers who are PEPs or who become PEPs subsequent to establishing a business relationship with a financial institution. There is also no clear guidance to help FIs determine whether a potential customer or beneficial owner is PEP. At the moment, the Nigerian regulatory authorities rely upon the FIs to accurately recognize and make this determination.

398. During the onsite assessment, the evaluation team was informed by Nigerian authorities that they have recently agreed upon a definition for PEPs with FIs, although no formal measures or guidance has been issued to FIs yet for their implementation. The recently agreed upon definition of PEPs includes: *"Public figures who occupy, have recently occupied, are actively seeking to occupy executive, legislative, military, state, or judicial branches of a government of a country, state, municipality or any department, agency or government owned corporation. And for this purpose, Public figures shall include related individuals (that is, spouses, parents, siblings, and children)."* Once this definition is formally adopted and clear guidelines issued to FIs for proper CDD measures, the evaluation team would expect Nigeria to have greater overall compliance with this Recommendation.

Additional elements:

399. In April 2005, Nigeria ratified the 2003 United Nations Convention against Corruption. Although all the provisions of the Convention have not been fully implemented, many of them are included in the Nigerian ICPC Act of 2000. The evaluation team was told that Nigeria is currently working to fully implement all the provisions of the Convention.

Recommendation 7

400. Nigeria does not address correspondent banking in its AML law (MLP Act, 2004), but rather it is included in a guidance note issued by the CBN. There is a general provision stated in Paragraph (xi) of the KYC Directive for FIs to "gather and maintain sufficient information about their correspondent or respondent institutions." However, it

does not provide for clear definition of a correspondent banking relationship, or how to determine the suitability of correspondent banks.

401. Paragraph 7.8.4 of the KYC Manual also provides that banks should "guard against establishing correspondence relationships with high risk foreign banks, e.g. shell banks with no physical presence in any country, or with correspondent banks that permit their accounts to be used by such banks." Unfortunately, this guidance also failed to clearly describe what constitutes a correspondent banking relationship.

402. There is no obligation to gather sufficient information about a respondent institution, or assess the respondent institution's AML/CFT controls and determine that they are adequate and effective. Furthermore, there is no obligation by law or regulation that requires FIs to obtain senior management approval before entering into a correspondent relationship, or document the respective AML/CFT responsibilities of each institution. There is also no guidance provided to FIs that addresses how they should determine the suitability of such banks before entering into a correspondent banking relationship. Representatives from the banking industry stated that they do not maintain any payable-through accounts, and will only establish a corresponding banking relationship with jurisdictions that apply the FATF standards. They advised that FIs would normally ensure that information on correspondent banks is collected and maintained within the institution.

Recommendation 8

403. Representatives from the banking industry informed the evaluation team that banks would not establish or permit an electronic banking relationship with a customer unless an initial face-to-face contact had been made with the FI. Customers who are permitted to conduct financial transactions by phone or fax must have established an initial meeting in person with the FI prior to being conducting any electronic type of transaction.

404. For non face-to-face customers, Paragraph 4.8 of the KYC Manual provides that "at least one additional check against impersonation or fraud" must be undertaken by FIs as part of their enhanced CDD procedures, but that the "extent of identification evidence for a non face-to-face customer will depend on the nature and characteristics or risk associated with the internet, postal, and telephone customers." The guidance also states that FIs should conduct "regular monitoring of internet-based business/clients" as part of its ongoing due diligence procedures.

405. Paragraph (x) of the KYC Directive includes a provision for FIs to "apply effective customer identification procedures and on-going monitoring standards for telephone and electronic banking customers and proactively assess various issues posed by emerging technologies." However, representatives from the security and banking industry stated that the same CDD and ongoing due diligence measures were applied to those customers who undertake non face-to-face transactions as those customers who conduct their financial transactions in person. Enhanced monitoring or due diligence was

performed on a case-by-case basis, regardless if the customer's transaction occurred in person or by electronic means.

406. The CBN has issued a Guideline on E-Banking, which states that FIs should maintain a clear audit trail of online transactions but the guidance failed to specify the level of ongoing due diligence or enhanced CDD measures that should be applied to this type of transaction. Representatives from the banking industry informed the team that e-banking is a relatively new concept and is not currently offered by all banks.

3.2.2 Recommendations and Comments

General Comments

407. The evaluation team believes the Nigerian Government has made substantial progress in implementing AML measures and has taken a number of steps to build a sustainable AML regime. It is clear that the fundamental provisions, such as customer identification and record keeping, are well embedded within the system. It was obvious from the discussions with the public and private sector institutions that Nigeria is prepared to embrace the next level of implementation. This next level would include some of the more challenging issues such as determining beneficial ownership, identifying politically exposed persons (PEPs), and defining clear procedures for correspondent banking. The successful implementation of these factors will help ensure Nigeria's future compliance with the FATF recommendations.

408. The team observed that Nigeria's desire to move towards a risk-based approach is a factor which has been acknowledged by the supervisory authorities as still being in its infancy. Thus, the broader concept of risk for both financial institutions and government agencies by way of risk identification and monitoring are still being developed. Once this has been fully developed, an improved implementation of CDD requirement and effective reporting of the STR regime is expected

409. The evaluators had significant concerns that there were no STRs reported from some sectors and under reporting of STRs from others. The evaluation team was of the impression that in some cases STRs were substituted by CTRs, thus inhibiting effective analysis by the NFIU.

410. ***Recommendation 5:*** The requirement for FIs not to open or maintain anonymous or numbered accounts see is not written in Nigerian law, but rather in guidelines issued by the CBN, which does not meet the minimum requirement of this criterion. Nigeria should include an explicit statement in the MLP Act that precludes the opening and maintaining of such accounts in order to increase the effectiveness of the provisions of the law.

411. The MLP Act does not fully impose the requirement for FIs to conduct CDD in each of the categories in Criterion 5.2 of the Methodology. For instance, when the FI has

doubts about the veracity or adequacy of previously obtained customer identification, data, and for occasional transactions that are wire transfers.

412. The reporting requirement for occasional transactions that are wire transfers is USD 5,000, which exceeds the FATF standard of USD 1,000. Nigeria should lower the reporting threshold for such cases in order to comply with the FATF standard.

413. While most FIs are correctly filing CTRs, it appears that some FIs file CTRs incorrectly for transactions that may fall below the reporting threshold. In addition, FIs seem to file CTRs in a broad manner, even in instances where an STR may be more appropriate. It should be made clear to FIs that incorrect CTR reporting has a detrimental effect upon the overall effectiveness of the AML/CFT regime.

414. Although BDCs are collecting required CDD information on their customers, they do not typically verify this information. Steps should be taken by BDCs to comply with the MLP Act requirement and FATF Recommendations on the verification of their customers' identification information.

415. The MLP Act and guidance in relation to determining beneficial ownership is unclear. Nigeria should issue further guidance to clarify FIs' responsibilities in determining beneficial ownership. It was unclear in the insurance and capital market sectors if beneficial ownership information was being obtained for all individuals who may have some ownership or control over the funds in an account.

416. While FIs ensure that they maintain updated CDD information on their customers, the quality of their regular reviews is uncertain since FIs have not received sufficient guidance to help them distinguish among the various levels of risk. The evaluation team acknowledges that Nigeria is still in the early stages of conducting a risk assessment and identifying those categories of customers that carry higher levels of risk. However, once the risk assessment is complete and a risk-based approach is fully implemented, Nigerian authorities should provide clear guidance on how to identify high risk customers, and on appropriate monitoring and reporting procedures to apply for such customers.

417. ***Recommendation 6:*** There is no requirement in Nigerian law that relates to PEPs, and there is no statement in the law or any guidance that clearly defines PEPs according to FATF standards. Although the KYC Directive provides for enhanced CDD measures regarding the establishment of a PEP account, there is no clear guidance that states what enhanced CDD measures FIs must take for those customers or beneficial owners who become PEPs subsequent to establishing a business relationship with a financial institution.

418. The recently agreed upon definition of PEPs by the Nigerian regulatory authorities should be formally issued in legislation or guidance for FIs to determine whether their existing customers, potential customers, or any beneficial owners are PEPs. Additionally, clear enhanced CDD procedures should be developed and provided to FIs in order to increase the effectiveness of their risk monitoring for PEP accounts.

Recommendation 7

419. Nigeria has not effectively implemented this Recommendation. Correspondent banking is not addressed by law, and is not clearly defined in any regulation. The guidance issued on correspondent banking by the CBN is limited and does not provide how FIs should determine the suitability of correspondent banks before entering into such a banking relationship.

420. There is no obligation that requires FIs to obtain senior management approval before entering into a correspondent relationship. In practice, however, representatives from the banking industry stated that they do not maintain any payable-through accounts, and will only establish a corresponding banking relationship with jurisdictions that apply the FATF standards.

421. The evaluation team recommends that Nigeria fully implement this Recommendation by clearly defining a correspondent banking relationship in law or regulation. It is further recommended that Nigeria provide clear guidance to FIs for determining the suitability of correspondent banks, as well as for monitoring and maintaining such correspondent banking relationships.

422. ***Recommendation 8:*** Nigeria has not implemented effective measures concerning risks in technology or the establishment of non face-to-face business transactions. FIs are prohibited from establishing an electronic banking relationship with a new customer unless an initial face-to-face contact had been made which, in the future, will limit Nigeria's opportunity to develop and attract new business relationships.

423. The CBN has issued some guidance regarding the required CDD and ongoing due diligence procedures necessary for non face-to-face customers. In practice, however, the FIs apply the same CDD and ongoing due diligence measures to those customers who undertake non face-to-face transactions as those customers who conduct their financial transactions in person. Enhanced monitoring or due diligence is generally performed on a case-by-case basis, regardless if the customer's transaction occurred in person or by electronic means.

424. Although the evaluation team is aware that electronic banking is a relatively new concept in Nigeria, it is recommended that the CBN's guideline on E-banking should be revisited to include clear guidance for conducting ongoing due diligence and enhanced CDD measures.

3.2.3 Compliance with Recommendation 5 to 8

Rec.	Rating	Summary of Factors Underlying Rating
R.5	**NC**	• There is no statement in the law (MLP Act 2004) that explicitly prohibits the opening or maintaining of numbered or anonymous accounts. • The requirement by law to conduct CDD is not extended to all of the situations required by the FATF Recommendations, particularly where doubts arise as to previously obtained CDD information for occasional transactions above USD 5,000 that are not cash, when there is a suspicion of terrorist financing, and for occasional transactions that are wire transfers. • There is no legal requirement to conduct risk assessment in order to determine the risks posed by existing customers. • The reporting requirement for occasional transactions that are wire transfers is USD 5,000, which exceeds the FATF standard of USD 1,000. • BDCs do not currently take steps to verify the identification information obtained from their customers, which does not comply with CDD requirements in the MLP Act and FATF Recommendations. • There is no clear obligation to identify and take reasonable measures to verify the beneficial owner for all customers, including determining whether the customer is acting on his/her own behalf, understanding the ownership/control structure of the legal entity, and determine the natural persons who exercise ultimate control over the entity. • Paragraph 9 of the KYCM allows for some full exemptions from CDD, rather than merely simplified or reduced due diligence. • The MLP Act and Guidance to FIs on beneficial ownership is unclear, particularly in the insurance and capital markets sectors where beneficial ownership information is not consistently collected. • The quality of FIs' regular reviews of their customer accounts is questionable since sufficient guidance to help distinguish among the various levels of risk is lacking. Clear guidance has not been provided to FIs to help them correctly identify and monitor high risk

		customers. • The assessors were of the view there is no explicit requirement to conduct ongoing due diligence on business relationships.
R.6	**NC**	• There is no requirement in Nigerian law that relates to PEPs, and no statement that clearly defines PEPs according to FATF standards. • There is no clear guidance that states what enhanced CDD measures FIs must take for those customers or beneficial owners who become PEPs subsequent to establishing a business relationship.
R.7	**NC**	• There is no clear definition of correspondent banking either in law or regulation. • The current guidance on correspondent banking does not provide how to determine the suitability of correspondent banks before FIs establish such a relationship. • There is no obligation to gather sufficient information about a respondent institution, or assess the respondent institution's AML/CFT controls and determine that they are adequate and effective. • There is no obligation that requires senior management approval before FIs establish a correspondent relationship, or document the respective AML/CFT responsibilities of each institution. • There is no guidance provided to FIs for monitoring and maintaining a correspondent banking relationship.
R.8	**NC**	• The measures for mitigating risks in technology and for establishing non face-to-face businesses are not fully developed. • The guidance for enhanced CDD and ongoing due diligence procedures for non face-to-face customers is not effectively applied by FIs (particularly the banking and securities sector).

3.3 Third Parties and Introduced Business (R. 9)

3.3.1 Description and Analysis

Recommendation 9

425. Nigeria does not have a prohibition against the use of third parties or intermediaries by its FIs for obtaining and verifying customer information. Rather, Section 7 of Nigeria's KYC Manual makes a provision for FIs to use third parties or intermediaries to perform CDD procedures, although in practice, most FIs conduct their own CDD and verification measures for each customer. Paragraph 7.1 of Nigeria's KYC Manual states that while FIs can rely on third parties or intermediaries to conduct CDD measures under certain circumstances, the responsibility to obtain satisfactory identification evidence ultimately rests with the FI that is entering into the business relationship with the customer. Representatives from Nigerian banks stated that it is the common practice for each bank, regardless if it acts as an intermediary or introducing bank, to undertake its own CDD and identity verification measures for each customer without exception; no reliance is placed upon a third or intermediary party to verify a customer's identity.

426. With regard to the insurance, securities, and bureaus de change (BDCs) sectors however, representatives from these industries stated that they rely upon their licensed agents to conduct proper CDD measures for each customer. However, Paragraph 7.6.1 states that in instances *"where an applicant is dealing in its own name as agent for its own client(s), a financial institution must, in addition to verifying the agent, establish the identity of the underlying client(s)."* In this regard, the insurance, securities, and BDC sectors all fall short of fully meeting their obligations as stated by this regulation, as well as the minimum criteria for this Recommendation. Representatives from Nigerian insurance companies, securities firms, and BDCs informed the assessment team that they are able to obtain from their agents any CDD information as needed, or any other information concerning certain elements of the CDD process. The efficiency, with which such information can be obtained, however, is moderate since most customer files are maintained manually and not electronically by these FIs.

427. NAICOM is the body responsible for regulating insurance companies; the SEC is responsible for supervision over securities firms; and BDCs fall under the supervision of the Central Bank of Nigeria. These regulatory bodies all have identified clear measures for complying with CDD requirements that their covered entities must meet. For instances in which a foreign country is the third party and has provided CDD information to Nigerian FIs, the assessors were told that if the country is not a FATF or FSRB member, then Nigeria will not accept the information supplied to them or conduct business with it. However, even for those countries that are members of FATF or a FSRB, no additional due diligence appears to be performed by Nigerian FIs to determine the level of the foreign country's compliance with the FATF Recommendations before accepting any CDD information.

428. In the insurance sector, representatives from an insurance company stated that they were aware that some existing customers' accounts were not updated regularly to ensure that CDD information was indeed accurate or completed by the licensing agent. As previously stated in Recommendation 5, the evaluation team was informed that the insurance company was aware that several of its branches had not undertaken a review of its existing customers' records to ensure that all required CDD information was maintained on file. At the time of the onsite assessment, the insurance company had not taken its own measures to establish their underlying clients' identity, and continued to rely upon its agents to perform these CDD measures. This same shortcoming applies to both the BDCs and the securities sectors, whose representatives with whom the assessors met stated that they rely upon their agents to perform the required CDD procedures for

3.3.2 Recommendations and Comments

429. Nigeria does not have a prohibition against the usage of third parties or intermediaries by its FIs for obtaining and verifying customer information, which does not comply with the criterion of this Recommendation. Rather, it actually has a legal provision for the use of third parties or intermediaries to perform CDD procedures that applies to all FIs. Nigerian banks, however, as a matter of practice conduct their own CDD and verification measures for each customer without exception.

430. The insurance companies, securities firms, and BDCs, on the other hand, stated that they rely upon their agents to obtain and verify their customers' identity, but do not take it upon themselves to establish customers' identity. Furthermore, these FIs have not demonstrated to the assessors that they conduct proper due diligence to satisfy themselves that a third party that is a foreign country effectively applies the FATF standards for CDD requirements. These limitations do not comply with Paragraph 7.6.1 of the KYC Manual, and also does not meet the minimum criteria for this Recommendation.

3.3.3 Compliance with Recommendation 9

Rec.	Rating	Summary of Factors Underlying Rating
R.9	**PC**	• Nigeria does not have a prohibition against the usage of third parties or intermediaries by its FIs for obtaining and verifying customer information. • Insurance companies, securities firms, and BDCs rely upon their agents to obtain and verify CDD information, but do not conduct any verification measures themselves as required in the KYC Manual. • FIs have not demonstrated that proper due diligence is conducted to satisfy themselves that a third party which is a foreign country effectively applies the FATF standards for CDD requirements.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

431. Nigerian law provides for the lifting of bank secrecy and confidentiality in Section 12 (4) of the MLP Act, which states, *"Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set in the [law] or for refusing to be a witness to facts likely to constitute an offence under this Act or any other law."*

Ability of competent authorities to access information

432. In addition, Section 12 (1) of the MLP Act also empowers Nigerian authorities to access any records necessary, whether financial or commercial, to perform their functions in combating money laundering and terrorist financing.

Sharing of information with other competent authorities internationally and domestically

433. Sections 11 (h) and 38 (1) of the EFCC Act provides for the dissemination of information both domestically and internationally. Domestic information sharing seems to be particularly effective as representatives from several Nigerian authorities stated that the level of cooperation that exists has helped agencies process suspected money laundering or terrorist financing cases with more efficiency and support than before the enactment of the law.

3.4.2 Recommendations and Comments

434. Nigerian law provides for the lifting of bank secrecy and confidentiality in order for authorities to perform their functions in combating money laundering or terrorist financing. The law also provides for access to information and records, and the sharing of information both domestically and internationally. .

3.4.3 Compliance with Recommendation 4

Rec.	Rating	Summary of Factors Underlying Rating
R.4	**C**	

3.5 Recording keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

435. Sections 6 and 7 of the MLP Act 2003 provide the legal framework requiring FIs and DNFIs to preserve records of transactions for period of at least 5 years. Additionally, the Foreign Exchange Act and also the E-banking guideline of the Central Bank require FIs to preserve their records.

436. SEC rules and the NAICOM Act also provide for the maintenance of transaction records. The details of the records to be kept include origin of funds, destination of funds, the purpose of the transaction and the identity of the beneficiary. In addition, the KYC manual recommends that adequate procedures should be established to record transactions and take relevant identification evidence for remittances, and wire transfers.

Record keeping and Reconstruction of Transaction Records

437. Sections 3, 4, 5, 6 and 7 of the MPL Act provide details of the information on transactions by FIs and DNFIs that should be obtained and preserved by FIs and DNFIs. Additionally, the KYCM and the CBN circulars and guidelines provide further guidance and checklist on information to be obtained and recorded by FIs. The SEC Rules 47, 138 and 154 and Sections 33 and 39 of the NAICOM Act also provide further details on the transaction records. Whilst there is a law in place, there are concerns that some sectors are not meeting record keeping requirements.

Record Keeping for Identification data

438. The provisions of Section 7 of the MLP Act requires FIs and DNFIs to preserve records of identification data on customers for all transactions for at least five years whilst Sections 3 and 4 of the MLP Act provides for details of identification regarding customers to be obtained. This includes valid original copy of an official document with name and photograph address, certificate of incorporation, and power of attorney. The Assessors were concerned that the process for the preservation of customer's account files, and detailed transaction information were not in line with industry standard in some of the FIs.

Availability of Records to Competent Authorities

439. In line with Section 8 of the MLP Act, the records to be preserved under Section 7 of the MLP Act shall be communicated to the competent authorities in Nigeria (CBN, EFEC, NDLEA) or other regulatory authorities. Under Section 20 of the MLP Act, an officer of the commission or agency duly authorized to do so, may demand, obtain and inspect the books and records of the financial institution to confirm compliance with the

provisions of the MLP Act. In addition, the BOFI Act under Section 25, NAICOM Act under Section 33 and 39 and Section 8(9), Rules 9 and 153 of SEC Act empowers the CBN, NAICOM and SEC to be furnished with any information they may require.

Special Recommendation VII

Originator Information for Wire Transfer and Threshold

440. There is no explicit provision in the MLP Act relating to wire transfers. However, Section 2 of the MLP Act requires the FIs to report to the Central Bank, transfers to or from a foreign country of funds or securities of a sum exceeding US$10,000.00 or its equivalent by any person or body corporate. The Foreign Exchange Act under Section 25 requires FIs to provide information on transfers in excess of US$10,000.00.

Verifying originator information

441. However, the details of the information required for verification are not provided in the law. The CBN Circular on electronic banking merely states that electronic banking products and services should comply with the MLP Act and the KYC Manual.

Maintaining originator information

442. The Circular on e-banking additionally requires authorized institutions to preserve records of transaction for a minimum of 5 years for audit purposes.

Cross-border wire transfer

443. Cross border wire transfer is covered under Section 2 of the MLP Act, which requires reporting for the transfer of funds to or from any country. The Central Bank and the regulatory institutions are yet to adopt a risk-based approach for handling wire transfers. At the moment, there is no guidance on the detailed information that should be included in the originator information.

Monitoring of information and sanctions

444. The monitoring of foreign exchange transaction including transfers in line with the FEMMP Act and the Circular on E-banking is the responsibility of the Central Bank. The monitoring of banks through on-site visits covers foreign exchange transactions. The transfer of security as contemplated by the MLP Act is to be monitored by the SEC.

445. The CBN through its circular (BSD/08/2005) addressed to all FIs directed them that all STRs related to TF should be forwarded to the NFIU. The circular on E-banking and the FEMMP Act has provisions for sanctions relating to money transfers ranging from monetary fines to suspension of license issued by the CBN.

3.5.2 Recommendations and Comments

446. The details of records of transaction are quite comprehensive under the MLP Act, the SEC rules, the NAICOM Act, and BOFI Acts and Circulars. On the contrary, the requirement on records to be preserved in relation to wire transfer (originator information) is not detailed.

447. The monitoring by the regulatory authorities has not been effective in the absence of any details on originator information as well as a risk based approach adopted by the supervisory authorities. However, there is need to have explicit provisions on wire transfer with details of the required information to be preserved. The informal foreign exchange dealers, the casinos and community banks should be brought on board for effective supervision and monitoring covering record keeping of wire transfer transactions. The legal framework should be amended to ensure that record keeping covers activities relating to financing of terrorism.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

Rec.	Rating	Summary of Factors Underlying Rating
R.10	**PC**	• The manner of preservation of information by some FIs does not meet required industry standard. • There is concern that some sectors are not meeting record keeping requirements. • The On-site supervision by the competent authorities is inconsistent and covers only a small percentage of the financial sector
SR VII	**NC**	• No explicit requirement in the laws for wire transfers generally. • The provisions in the Foreign Exchange Act and Circular on e-banking do not adequately provide guideline regarding the details of information in wire transfers to be preserved. • The threshold of US$10,000 is too high compared to US$1,000.00 set by FATF.

Unusual, Suspicious and other Transactions

3.6 Monitoring of transaction and relationships (R11 and 21)

3.6.1 *Description and Analysis*
Recommendation 11

448. The legal framework for monitoring transaction and relationships is found in the MLP Act, Section 6. The CBN Circular (BSD/07/2006) requires all Banks and other Financial Institutions to pay special attention to complex and unusual or suspicious transactions. Likewise, the Insurance Industry Policy Guidelines (IIPG) requires operators in the insurance industry to monitor transactions that are unusual and large in nature.

Complex, Unusual Large Transactions

449. Under Section 6 (1) of the MLP Act, FIs are required to seek information from customers as to the origin and destination of funds and identity of the beneficiary for transactions with unreasonable frequencies, unusual or unjustified complexities, no economic justification or lawful objectives. The requirement is to be adhered to regardless of the amount involved. The Central Bank circular on reporting of suspicious and cash transactions requires all banks and other financial institutions to examine and record all complex and unusual transactions. The IIPG also requires all insurance companies to pay attention and to report all transaction that are unusually large and complex in nature.

Examination of complex and unusual transactions

450. The MLP Act under Section 6 (1) prescribes for special surveillance on transactions with unjustifiable frequency, unusual or unjustified complexity, no economic justification or lawful objectives. FI and DNFPBs are required under Section 6(2) of the MLP Act, to draw up written reports containing all relevant information on the transactions under 6(1). By implication, FIs and DNFPBs are required to examine the background and purpose of any transaction before submitting it in writing to the NFIU. The assessors understand from discussions with the FIs that complex and unusual transactions are treated just like any ordinary suspicious transactions with no special surveillance.

Record keeping of findings

451. Section 6 of MLP Act requires special attention to be paid to complex unusually large transactions and those with no economic purpose and the reporting in writing of such transactions. Even though, there is no provision for the further examination of such transactions they are required to be kept for at least five years and accessible to LEAS. The existing legal frameworks - NAICOM, EFCC and BOFI Acts as well as the SEC

rules provide for unhindered access to all records of findings and relevant documents to the regulatory bodies.

Recommendation 21

452. There is no provision in the Nigeria legal or regulatory framework requiring FIs to pay special attention to business relationship and transaction with persons from countries which do not apply or insufficiently apply the recommendations. There are no measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries.

453. Assessors noted that FIs are ignorant of this recommendation and are not able to apply it in practice. There is a general notion that countries that do not apply FATF recommendation are those that were previously in the NCCT list.

454. There are no counter measures to be applied in the Nigerian context, in instances where a country fails to apply or insufficiently applies the FATF recommendations.

3.6.2 Recommendations and comments

455. The reporting of complex, unusually large transaction and transaction with no economic purpose is treated as ordinary STRs or CTRs with no special attention in its monitoring. There is no guideline or regulation in dealing with such transactions after detection. No special attention is paid to such transaction during on-site examination by the competent authority. There has been no attempt to prevent FIs from dealing with countries that do not apply FATF standards by the Nigerian authorities. FIs should be required to further examine transactions under Rs.11 and 21 before submitting a report in writing and not treat such transaction as ordinary STRs or CTRs. A framework to deal with non-compliant countries with FATF standards should be developed. The NFIU and CBN should establish a mechanism of providing information to FIs on countries that do not apply FATF recommendation. In addition appropriate counter measures should be developed for application by the FIs in dealing with such countries that do not apply FATF Standards.

3.5.3 Compliance with Recommendation 11 and 21

Rec.	Rating	Summary of Factors Underlying Rating
R.11	**LC**	• No special attention are paid to monitoring of unusual transactions
R.21	**NC**	• No provision for special attention on countries not applying FATF recommendations • There are no counter measures being applied to countries that do not apply FATF recommendations.

3.7 Suspicious Transaction reports and other reporting (R13-14, 19, 25 and SR IV)

3.7.1 *Description and analysis*

456. The legal framework for suspicious transaction reports and other reporting is covered under Section 6 (1) and (2) of the MLP Act, 2004. CBN Circular (BSD/07/2006) requires banks and other financial institutions to report all suspicious and cash transactions reports to the NFIU. The IIPG and the SEC rules require Insurance companies and capital market operators to report all suspicious transactions. The CBN Circular (BSD/13/06) requires banks and other financial institutions to report all suspicious transactions relating to financing of terrorism to the NFIU.

Recommendation 13 & Special Recommendation IV

Reporting to FIU

457. The MLP Act, under Section 6, requires all financial institutions and designated non-financial institutions to draw up a written report containing all relevant information on transaction or suspicious transaction whether or not it relates to the laundering of the proceeds of a crime or an illegal act for submission to the NFIU within 7 days after the transaction. The CBN circular of March 2006 requested all banks and other financial institutions to report only NFIU. In addition, the CBN issued a circular (BSD/13/2006) in August 2006, requiring all FIs to forward suspicious transaction reports (STR) to the NFIU where the suspicious and unusual transactions include potential financing of terrorism, and terrorist acts.

STR related to terrorist financing

458. There is no stand alone legislation on terrorism and terrorist financing in Nigeria currently even though Section 15 of the EFCC sought to criminalize offences relating to terrorism. The sanction under Section 15 is life imprisonment for all offenders. The Central Bank issued a guideline requiring reporting of transaction relating to terrorism financing by FIs under Circular (BSD/13/06) of August 26, 2006. However, as indicated above, this circular is not supported by a terrorist financing legislative framework in accordance with FATF Recommendations and SR. II, and the 1999 TF Convention.

Reporting Threshold

459. There is no threshold in respect of the requirement to report transactions pursuant to Section 6 of the MLP Act. Reporting are to be made regardless of the amount involved in the transaction.

Reporting of Tax Matters

460. There is a requirement to report all suspicious transaction without any restriction on STRs related to fiscal crime or any other crime.

Additional Element

461. The MLP Act makes reference to suspicious transaction whether or not it relates to laundering of proceeds of a crime or illegal act. This is an "all crimes" approach and tends to cover all criminal conducts which have been defined in an existing law.

Recommendation 14

462. The MLP Act does not explicitly provide for the protection of persons who report in good faith. The EFCC Act under Section 39 (1) provides protection to EFCC investigators, who may not disclose their informants except through a Court order. Where persons providing information are regarded as informants, then directors of FIs, officers and employees could be said to be protected. This is however not a direct protection of informants as required by this Recommendation.

463. This does not however amount to protection from criminal or civil liability for breach of confidentiality by FIs and other reporting entities. Section 39(d) of the EFCC Act provides protection and authority to persons receiving information under the Act whilst Section 41 provides immunity for prosecution of law enforcement officer in the cause of investigation and prosecution.

464. Under Section 15(1), of the MLP Act, it is an offence for any person in the capacity of a director, officer or employee of a financial institution to warn or in any way intimates the owner of funds reported under suspicious transaction. This offence is punishable to an imprisonment term of not less than 2 years in line with Section 15 (2) of the MLP Act.

Additional Elements

465. Those who act as informants to LEAs are protected under Section 39 of the EFCC Act unless the information is required to be disclosed by a law court.

Recommendation 25 (***guidance and feedback to financial institutions***)

466. The Nigerian regulatory authorities have taken a number of steps through guidelines, circulars and directives to assist relevant financial and non-bank financial institutions to implement and comply with AML/CFT requirement. Nevertheless, the guidance issued to FIs is too general and skewed towards prudential supervision. The available guidelines are not focused on the effective implementation of FATF Recommendations.

467. Section 6(4) of the MLP Act requires the competent authority to acknowledge receipt of any disclosure, report or information received. At the moment, there is no framework in place on the feedback mechanism to reporting institutions. Information on reports made to authorities is obtained only when additional information is required to conduct further investigation on the same case. As of now, the only other form of feedback is the NFIU newsletter. This content of the newsletter is not comprehensive and does not feature statistics related to STRs regularly.

Recommendation 19 (large currency transaction reporting)

468. Section 10(1) of the MLP Act mandates that both financial institutions and designated non-financial institutions must file a currency transaction report (CTR) for any transaction or transfer of funds in excess of N1 million for individuals (equivalent to USD 9,000), which is within the FATF standard of USD 15,000. However, the reporting threshold for corporate entities in Nigeria is N5 million (equivalent to USD 43,000), which exceeds the FATF threshold.

469. According to Section 10(1) of the MLP Act, CTRs must be filed with the NFIU within seven days of the transaction. The CTRs are then compiled into the NFIU's CTR database, and are reviewed by NFIU analysts. In order to ensure that only authorized individuals have access to the CTR database, every NFIU staff member must be vetted and sign a confidentiality agreement prior to their employment.

470. Additional safeguards for protecting the CTR information include firewalls that prohibit unauthorized users from accessing the database, and permitting "read-only" access to the CTR database for authorized NFIU staff. If the NFIU determines that a CTR is indicative of a suspicious transaction, then it is referred to law enforcement authorities for further investigation.

471. In addition, the evaluation team noted that FIs were filing CTRs in a broad manner, even in some instances where an STR may have been more appropriate. For this reason, the evaluation team was of the impression that most FIs did not have a clear understanding of how to determine suspicious type of activity, or the significance of incorrect CTR reporting upon the effectiveness of the overall AML system.

472. The NFIU has its operations computerized and the data well secured. The CBN Circulars (BSD/07/2006 and BSD/13/2006) require FIs to report all cash and suspicious transactions to the NFIU.

Additional Elements

473. The NFIU has the mandate to receive all transaction reports, which is maintained in a secured data base. The reporting and handling of the data is guarded to ensure protection and proper use of information and data.

Recommendation 32 ***(maintaining comprehensive statistics)***

474. Statistics on ML and FT are currently kept by different authorities: Police, NIA, SSS, NDLEA, CBN and EFCC. However, only the NFIU keep data on STRs and CTRS. Statistics on cross-border transportation of currency and bearer instruments are kept by the NCS and NFIU. (See statistics from NFIU under Recommendation 26)

3.7.2 Recommendations and Comments

475. The requirements for reporting are adequate and institutions are generally in compliance with this requirement. However, the monitoring through on-site visits to ensure effectiveness of reporting is not well structured and coordinated by the various authorities. FIs are jointly examined by regulatory authorities but ML/FT issues are said to be handled by NFIU.

476. The CBN team does not seem to have the expertise on supervision of ML/FT issues despite their oversight responsibility over FIs and OFIs. This is a major shortcoming that could hamper effectiveness in the supervision of FIs on ML/FT issues. There are few cases of STRs unlike the numerous CTRs reported to the NFIU. Assessors noted that FIs were filing CTRs in a broad manner, even in some instances where an STR may have also been appropriate. For this reason, the evaluation team was of the impression that most FIs did not have a clear understanding of how to determine suspicious activity, or alternatively were reluctant to file STRs. Equally, the significance of over relying on CTR reporting has the ability to impact on the effectiveness of the overall AML system. The evaluation team also noted the extremely low numbers of filed STRs from covered institutions. In the case of securities sector, insurance company, mortgage institutions, Bureau de change and community banks, no STRs were filed for 2007.

477. The reporting requirements for transaction relating to terrorist financing should be made explicit in the law Circulars such as that issued by the CBN should be adopted by other supervisory authorities to ensure that all the reporting institutions are covered. The protection of officials of reporting institutions should be made more explicit in the law to encourage effective reporting. Nigerian law mandates that FIs must file a CTR within seven days to the NFIU for any transaction or transfer of funds in excess of N1million (equivalent to USD9, 000) for individuals and N5million (equivalent to USD43, 000) for corporate entities. The reporting requirement for corporate entities, however, exceeds the FATF standard of USD15, 000. Nigeria should lower the reporting threshold for corporate entities in order to comply with the FATF standard.

478 The NFIU actively maintains a computerised database of all CTR reports, and ensures that proper safeguards are in place to protect access to and the use of the database.

3.7.3 Compliance with Recommendation 13,14,19,25 (criteria 25.2) and Special Recommendation IV)

Rec.	Rating	Summary of Factors Underlying Rating
R.13	**PC**	• Limited STR reporting – lack of knowledge of suspicious transaction features by reporting entities. • STRs are being substituted for CTRs. • Lack of definition of what is "suspicious transactions" in the MLP Act. • No consistency in the guidelines issued to all reporting institutions.
R.14	**PC**	• No explicit legal protection for reporting institutions
R.19	**LC**	• A sizeable informal sector not covered in the reporting requirement (large informal exchange bureau - unlicensed by CBN) and DNFBPs • Nigeria's reporting threshold for corporate entities is N5million (equivalent to USD43, 000), which exceeds the FATF threshold of USD15, 000.
R.25.2	**NC**	• No formal mechanism for feedback reporting.
IV	**NC**	• There is no explicit requirement in the laws for reporting relating to terrorism financing or terrorist acts. • Other supervisory bodies have not issued any directives on terrorism financing or terrorism acts.

Internal controls and other measures

3.8 Internal Controls, Compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and Analysis

Recommendation 15

479. The legal framework, provided under Section 9 of the MLP Act 2004 requires every financial institution to develop programmes to combat the laundering of proceeds of crime or other illegal acts through the designation of compliance officers, regular training and the establishment of internal audit units. Regulatory authorities, through circulars, and guidelines, have directed FIs and DNFPBs to develop internal mechanism that would enable them prevent the money laundering and terrorist financing.

480. Assessors noted the efforts of FIs in developing internal policies, appointment of compliance officers, hiring "fit and proper" officers, and training of employees and communicating relevant reports to the competent authorities. For an effective implementation of money laundering laws and regulations, compliance officers of the various FIs formed a committee called "chief compliance officers association" that meets regularly to share information and experience.

481. The supervisory authorities identify training programs or provide them with information and contacts for training outside Nigeria. The BOFI Act, ISA rule and the Insurance Act requires the appointment of senior staff after due clearance under a "fit and proper" test by the relevant supervisory authorities.

Internal AML/CFT controls

482. FIs are required under Section 9(d) of the MLP Act to establish internal audit units to ensure compliance with and ensure the effectiveness of the measures taken to combat the laundering of the proceeds of crime or other illegal acts. Banking institutions have developed and maintain internal policies on the control measures to prevent the laundering of the proceeds of crime. The compliance officers disseminate the policies to the staff of the FIs to enhance their knowledge in the prevention of money laundering.

Compliance management arrangement

483. Under Section 9(1) (a) of the MLP Act, FIs are required to appoint compliance officers at management level at its headquarters, and local branches. CBN Circular of August 2002, Paragraph 17 of IIPG requires the appointment of compliance officers in banks and insurance companies. There is no specific provision indicating that the compliance officer must have timely access to customer identification and other CDD information, transaction records, and other relevant information.

484. In relation to the implementation of effective internal controls, it is apparent that among the larger institutions a considerable amount of time has been devoted to this issue and there is an increasing professionalization of the compliance function. However, effective implementation across all financial institutions seem varied, weaknesses were particularly noted in the insurance sector where previous supervisory oversight has identified failings in the areas of appointment of compliance officers, lack of in-house training, filing of CTRs/STRs and screening arrangements for high risk customers. Furthermore the assessors were concerned on the application of AML/CFT internal policies, procedures and controls in the branch network for all financial institutions. In particular within the Insurance sector it was reported that AML programmes have not been effectively expanded to the branch network due to local capacity issues.

485. Across all sectors, the assessors noted lack of mechanism on how to identify: 'red flags', weaknesses in systems to identify high-risk customers and deficiencies in STR procedures. Due to the low levels of supervisory oversight of some sectors the assessors were concerned that the overall effectiveness of internal controls beyond the larger institutions remained untested. Internal controls to counter terrorist financing, including procedures to check the relevant UN databases appeared particularly weak.

Audit function

486. Through the directives and monitoring of the CBN, commercial banks develop and maintain independent audit function to ensure compliance with directives to combat money laundering. These audit functions take cognizance of inherent risks as well as the vulnerabilities faced by the FIs in their operations.

Ongoing Employee training AML/CFT

487. FIs are required to provide regular training programmes for their employees. In addition to guidance notes, a number of targeted outreach and training sessions have been conducted by the competent authorities in collaboration with the NFIU to assist financial institutions; these sessions have included information on current techniques, methods and trend in relation to money laundering. The NFIU newsletter provides information on developments and efforts in the fight against money laundering and also serves as a source for further information. FIs have endeavored to provide the necessary training to their staff.

Screening procedures

488. In line with Section 44 of the BOFI Act, appointment of staff in FIs at management level requires the approval of the CBN after satisfying the criteria of the “Fit and Proper” test. SEC in compliance with Section 8 ISA Rules 15(3) approves the appointment of directors and management staff in the capital market. Section 12 of the Insurance Act sets out “fit and proper” criteria that staff at management level should satisfy before being employed. While this covers management, there is no broad

requirement to have screening procedures in place to ensure the application of high standard when hiring all employees.

489. Section 8 (w) of ISA gives power to SEC to disqualify unfair individuals from being employed in the Capital Market. Also code 2 of the Code of Conduct for capital market operators and their employees requires the recruitment of persons of unquestionable character. Rule 15 requires security clearance from the Police. Section 2(1) of the Insurance Act prohibits the employment of certain persons of questionable character in Insurance Companies.

Additional Elements

490. The CBN and NAICOM have issued circular to their supervised institutions to comply with this requirement related to the appointment of compliance officers and to ensure that they are independent. Assessors have noted that FIs have responded to this requirement. However, the level of independence of such compliance officers are questionable in that most of them are required to report to a level of management well below the Chief Executive or Board of Directors.

Recommendation 22

491. CBN circular BSD/DO/CIR/V.1/01/24 stipulates a requirement that AML/CFT measures should be applied to foreign branches and majority-owned subsidiaries. However, no similar requirement is stipulated in the law for the insurance sector.

492. There is no evidence supporting the existence of communication with home supervisors in instances where the subsidiaries are unable to observe appropriate AML/CFT measure due to prohibition by host country.

Additional Elements

493. Generally policies of the Nigerian banks are at a group level. Foreign branches and subsidiaries tend to adopt the Group policies with modification to suit their host country business environment, possible.

3.8.2 Recommendations and Comments

494. The supervisory authorities have policies to ensure the existence of internal controls, audit functions, compliance officers and programs on employee training. However, there is no evidence of the test of the adequacy and appropriateness of any of the internal policy measures and training programs.

495. The examination process by the Supervisory authorities should include the testing of the adequacy and appropriateness of the internal measures and the independence of the compliance officers. The guidelines on the application of FIs AML/CFT measures should be explicit on foreign branches and subsidiaries. FIs should be required to

communicate to home supervisors in instances where their branches or subsidiaries cannot apply the AML/CF measures due to restrictions in host countries.

3.8.3 Compliance with Recommendations 15 & 22

Rec.	Rating	Summary of Factors Underlying Rating
R.15	**PC**	• There is no specific provision indicating that the compliance officer must have timely access to customer identification and other CDD information, transaction records, and other relevant information. • There is no broad requirement to have screening procedures to ensure high standards when hiring all employees. • There is no framework to establish the adequacy and appropriateness of the internal policies • Compliance Officer are not independent
R.22	**PC**	• No explicit rules for the insurance sector to ensure that foreign branches and subsidiaries apply AML/CFT measures in host country to the extent possible. • There is no requirement on the part of FIs to inform the home country supervisor about their inability to observe appropriate AML/CFT measures because the host country's laws does not permit its application

3.9 Shell Banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

496. There is no requirement under the law that prohibits the establishment or operation of shell banks in Nigeria. There is also no clear definition of shell banks in any regulatory guidance or directive. The evaluators considered the absence of a clear definition or prohibition of shell banks as negative impact on the overall effectiveness and implementation of this Recommendation.

497. According to Nigerian authorities, the CBN will not grant an operating license to either shell banks or to anyone directly or indirectly located in tax havens. However, no reference was made to any guidance or directive on this issue.

498. Evaluators were informed that Section xi of the CBN KYC Directive is the legal provision that prohibits banks from engaging in correspondent banking relationships with shell banks. However, Section xi actually states that FIs must gather and maintain sufficient information about correspondent/respondent banks as part of their required CDD measures. The Directive makes no statement regarding the prohibition of FIs from engaging in any type of banking relationship with shell banks.

499. Nigerian regulatory authorities pointed to Section xi of the KYC Directive providing the legal mandate that requires FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. However, the Directive makes no reference to correspondent/respondent FIs in foreign countries that use shell banks, but rather requires that FIs gather sufficient information to fully understand the nature of their customers' businesses.

3.9.2 Recommendations and Comments

500. The provisions of this Recommendation have not been met as no legal requirement exist that prohibits financial institutions from establishing a relationship with shell banks either directly or through a correspondent bank. There is also no legal requirement for FIs to ensure that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks, which is of particular concern since Nigeria's FIs are left vulnerable to possible exploitation by established customers who could potentially transfer their funds from their Nigerian bank account to a shell bank account in a foreign country.

501. In order for Nigeria to become compliant with the provisions of this Recommendation, we recommend the following: (1) a clear definition of shell banks should be provided in a regulatory guidance for FIs; and (2) a new mandate should be developed that explicitly prohibits Nigerian FIs from engaging in any relationship with shell banks either directly or through a correspondent bank in a foreign country.

3.9.3 Compliance with Recommendation 18

Rec.	Rating	Summary of Factors Underlying Rating
R.18	**NC**	• There is no requirement by law that prohibits the establishment or operation of shell banks in Nigeria. • There is no legal requirement for FIs to ensure that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.10. The supervisory and oversight system – competent authorities and SROs; roles functions, duties, powers (including sanctions) (R23, 29, 17 & 25)

Regulation, supervision, guidance, monitoring and sanctions

General Background

502. Nigeria has designated competent authorities/institutions charged with the responsibility for ensuring FIs comply with requirements to combat money laundering and the financing of terrorism in their specific sectors. The CBN is responsible for banks and other financial institutions, SEC for the capital market and NAICOM for the insurance sector

3.10.1 Description and Analysis

Recommendation 23 (including Recommendation 30– structure and resources of the supervisory resources[11])

Overall supervision

503. The delivery of the CBN's supervisory responsibility for prudential purposes resides in two departments; the 'Banking Supervision Department' which comprises of 320 staff involved in monitoring the banks and the 'Other Financial Institutions Department' which has 141 staff to monitor community banks (currently converting to microfinance banks) and other financial institutions.

504. These departments, jointly with the NFIU, are also responsible for AML/CFT. All onsite inspections in relation to AML/CFT are conducted jointly with the NFIU compliance team. The CBN has implemented a concept of 'total examiner' for bank inspections, in that teams conducting on-site visits are required to gain familiarity with all aspects of inspection, including AML. In 2006 the CBN also deployed its E-FASS system (enhanced electronic financial analysis systems).

Ongoing supervision and monitoring framework

505. In reviewing the practical implementation of the current supervisory framework, it appears that the CBN are mostly involved in the 'prudential' aspects of the examination; whilst in comparison, NFIU staff assumes responsibility for the AML/CFT aspect of the onsite inspections. Therefore the NFIU undertake a pivotal function in the overall AML/CFT supervisory process, this includes responsibility for conducting onsite inspections, writing up inspection reports, making recommendations as to future action and ensuring that appropriate follow up procedures are in place. To support this role the

1. [11] As related to Recommendation 30; see section 7.1 for the compliance rating for this Recommendation

NFIU have established a dedicated compliance department consisting of 15 staff members.

506. In carrying out its supervisory responsibilities the CBN has manifested an intention to implement a risk-based approach. However, at the time of the onsite visit this had not yet been implemented and the methodology used for determining future allocation of supervisory resources was in the early stages of development.

507. As such current AML/CFT supervisory prioritization is mostly incorporated within the timetable of prudential onsite examinations: commercial banks once per year and community banks once every two years. It should be noted, however, that due to the conversion of Community Banks into Micro Finance Institutions, only four supervisory visits were conducted in the first half of 2007, and that all these visits were targeted inspections that occurred as a result of specific concerns. In the case of 'other financial institutions' the plan for supervisory visits were not provided.

508. In relation to AML/CFT oversight a similar arrangement of joint NFIU inspections is also in place for the investment and security sector. During January – May 2007, 40 inspections were jointly undertaken between SEC and the NFIU; a further 30 are planned for the remainder of 2007. Within SEC, AML supervisory matters are dealt with through the Money Laundering Monitoring Unit, a staff member of SEC is also seconded to the NFIU compliance team.

509. The CBN is formally charged with the supervisory oversight of the 474 bureau de change (BDCs) operating in Nigeria. In 2006 the CBN inspected 297 bureau de changes; however it was unclear to what extent AML/CFT factors were incorporated within these inspections. Furthermore no inspections of this sector had been undertaken for the first nine months of 2007 either solely by the CBN, or jointly with the NFIU. It therefore appears that in practice, the current monitoring role is mostly undertaken by the self regulatory body ABCON. The core supervisory programme operated by ABCON is mostly targeted towards safety and soundness issues and involves the use of external auditors who visit bureau de change once yearly. ABCON have appointed an in-house compliance officer to train and support the auditors on AML/CFT issues.

510. To date, however, it seemed that limited attention was paid to AML/CFT compliance issues - a factor which may explain why no breaches have been identified through the ongoing supervision.

511. In the case of the insurance sector, ongoing supervision and monitoring is conducted solely by NAICOM. Due to the recapitalization exercise embarked on by the government in the insurance sector, no specific AML/CFT inspections have taken place since early 2006, however all companies were inspected in 2006/07 as part of the overall process of recapitalization and consolidation. It was unclear to the evaluation team to what extent, if at all, AML/CFT supervisory issues were considered as part of the recapitalization inspection process. Although in a similar fashion to the banking sector

the recapitalization process has enabled the authorities to verify ownership structures of Nigerian insurance related companies.

512. Prior to embarking on the recapitalization and consolidation process 52 insurance companies were inspected By NAICOM in 2005/06, of these 19 (36%) were found to have failed to comply with AML requirements in legislation. Non-compliance related to: non appointment of a compliance officer, lack of in-house training, failure to file CTRs and STRs, and non implementation of the industry Know Your Customer Guidelines. Of the 19 companies identified as having failed to comply with AML/CFT requirements, it was unclear as to whether any formal sanctions were issued.

513. In relation to the post recapitalization and consolidation supervisory process no statistics were available to the evaluation team regarding the number of inspections carried out by NAICOM. The NFIU also confirmed that they have been unable to undertake joint inspections due to the recapitalization and consolidation process. Thus the evaluation team was unable to assess the extent of current AML/CFT supervisory measures.

514. NAICOM did, however, indicate a desire to put in place future supervision and monitoring arrangements that would address post consolidation issues such as targeted inspections and on-going monitoring. Prior to implementing future supervision and on-going monitoring arrangements, NAICOM are awaiting the outcome of a Government technical review committee which was set up in August 2007 to address fundamental issues surrounding the recapitalization and consolidation process. The outcome of this committee will determine which companies will be available for future inspection.

Joint Supervisory Visit, January – June 2007

Banks and Financial Institutions

Type of Institution	Total	Jan – June Joint NFIU/CBM 2007 (AML/CFT)
Commercial Banks	24	16
Community Banks	536 (currently undergoing transition into 339 newly licensed micro Finance Institutions)	4
Primary Mortgage Institutions	90	4
Finance Companies	110	0
Bureau de Change	474	0 (Yearly inspections over seen by ABCON)
Development Finance Institutions	6	0
	Total	24

Investment and Securities:

Type of Institution	Total	Joint NFIU/SEC Jan – June 2007 (AML/CFT)
Brokers/Dealers	276	0
Issuing Houses	47	40 AM/CFT inspections
Capital Market Consultants (solicitors, reporting accountants, auditors)	505	0
Trustees, Registers, Receiving Bankers, Funds/Portfolio Managers, Underwriters, Investment advisers, Rating Agencies	162	0
	Total	40

Insurance (post February 2007)

Type of Institution	Total	NAICOM AML/CFT specific inspections 2007
Reinsurance companies	2	0
Direct Life Insurance Companies	26	0
Direct non-life insurance companies	43	0
Insurance brokers	515	0
Loss adjusting firms	41	0
Insurance agents	3700	0
	Total	0

515. Overall, the number of AML specific visit for the first half of 2007 consisted of 64 visits, the bulk of these being in the capital market sector. This figure is against a backdrop of 32 NFIU joint visits in 2006; 12 financial institutions and 20 capital market operators.

Training of Supervisory Staff

516. To enhance technical expertise in delivering their regulatory responsibilities supervisors have participated in a variety of training programmes. In the case of the CBN staff this has included a range of in-house and specialist seminars; for instance in 2006 the inter-department committee hosted five regional one-day AML training programmes for over 750 participations, training was also provided by KPMG to bank directors which included representatives from CBN.

517. Eleven staff also attended seminars in the UK and Uganda. In relation to the insurance sector no specialist training has recently been provided, however NIACOM expressed a desire to implement future AML/CFT training programmes. Between 2006 and 2007, SEC sponsored 32 of its staff to attend various national and international courses, workshops and conferences. These included conferences in South Africa, UK and the US.

Authorities, Powers and Sanctions: Recommendation 29 & 17

Adequacy of powers, including on-site inspection and access to information

Recommendation 29

518. Competent supervisory agencies are all empowered by the various provisions of their enabling laws to carry out inspection (on-site and off-site) of the activities of financial institutions. The following are the provisions of various laws:

Securities - Sections 8(q) and 137 of the ISA, 1999
Insurance - Sections 32 and 35 of the NAICOM Act, 1997
CBN - Sections 30 – 32 of BOFIA

519. The NAICOM, EFCC, MLP and CBN Acts make it mandatory for regulated institutions to allow unhindered access to all records and documents. Regulatory and supervisory authorities all have powers to compel production of books, documents and records in respect of their business relationships, including information related to accounts. The following provisions are of note:

- Sections 26 – 29 of the Insurance Act, 2004.
- Rules 9 and 153(3) of SEC Rules and Regulations.
- Section 30(7) of BOFIA.
- Section 38 of the EFCC Act

Sanctions

520. There are a variety of criminal and civil sanctions available to the relevant designated authorities. Sections 5 (6), 6 (9), 14, 15, 16, 17 and 18 of MLPA, 2004 provide for criminal, civil and administrative sanctions for breach of AML/CFT requirements in the existing legislation. Imprisonment terms range from 1 to 3 years.

521. Section 5 (6) of the MLP Act provides a fine of N25, 000 (equivalent to USD 200) for each day those financial institutions fail to comply with customer identification and specified transactions within 7 days. S 6 (9) provides for a fine of N1 million (equivalent to USD 8,400) for each day a financial institution fails to report suspicious transactions to the EFCC and S 9 (2) provides for the CBN Governor to impose a penalty of not less than N 1 million or suspension of license issued to the financial institution for failure to comply with appointment of money laundering compliance officers.

522. The Insurance Act 2003 and the NAICOM Act 1997 similarly provide for sanctions for non compliance ranging from fines, suspension and cancellation of license to imprisonment. ISA Act, 1999, SEC Rules & Regulations and the code of conduct for capital market operators and their employers provide for various sanctions ranging from suspension, cancellation, revocation to withdrawing of licenses of erring operators. S. 60 of BOFIA 1991 (as amended) provides for a penalty of N2 million (equivalent to USD

17,000) or suspension of license issued to a financial institution for failure to comply with its rules, regulations or guidelines. In addition, the suspect may be referred to appropriate LEAs for further action.

523. Supervisors or other relevant authorities may impose sanction on financial institutions and designated non-financial institutions depending on the nature of the offence. The CBN Governor in section 9 (2) of MLPA 2004 has the capacity to impose sanctions on financial institutions that fail to comply with this requirement. In the event of non-compliance by any financial institution with the provisions of the MLP Act, 2004, the CBN may penalize the affected institution with a penalty of N1 million or withdraw its operating license. Section 7(2) of the EFCC Act, 2004 empowers the Commission to prosecute any financial institution for any breach of the MLP Act.

524. Section 18 (1) of MLP Act, 2004 provides sanctions for not only the corporate body but also for the directors and managers. Similarly, section 11 of MLP Act 2004 provides for criminal proceedings against directors and employees of financial institutions involved in offence of conspiracy in respect of blocked funds under section 6 (7) of this Act.

525. In considering how the sanctions regime works in practice, the evaluation team was advised that a number of administrative sanctions have been implemented by the CBN and NIACOM. The breaches include failing to implement appropriate CDD requirements, non reporting of transactions that exceed the threshold, poor preservation of records, failure to report international transactions, non-appointment of a compliance officer, and non compliance with AML/CFT training requirement for staff.

526. In 2005, following inspections of 52 insurance companies NAICOM identified 19 companies as having failed with AML requirements; however, no further information was available on the penalties that were imposed. Moreover, due to the process of recapitalization and consolidation there has been an extended period of significantly reduced AML supervision, a factor which explains why no subsequent sanctions have been issued.

527. The CBN informed the evaluation team that they have imposed a number of monetary penalties for infringements of AML requirements. In 2005, a total of N21.5 million (equivalent to USD 180,000) was imposed on banks for various AML infractions; in 2006 N3 million (equivalent to USD 25,000) and 2007, N4 million (equivalent to USD 34,000) penalties were imposed. The 2007 penalties include a N2 million (equivalent to USD 17,000) fine imposed on a community bank for serious breaches of the MLPA, 2004. With the exception of the community bank fine, no further information was made available as to the nature and overall number of sanctions imposed. As such the evaluation team was unable to conclude whether the CBN utilizes its available sanctions regime in an effective, proportionate and dissuasive manner.

528. In the case of SEC no direct AML/CFT sanctions have been imposed on those operating in the investment and securities sector. However, five market operators were

penalized for failing to submit adequate financial reconciliation statements and the compliance department has forwarded a number of criminal cases arising from capital market operations to criminal prosecuting authorities; these include 14 referrals to the police and 8 referrals to the EFCC.

Market entry – Recommendation 23

529. Over recent years the financial sector has undergone a number of significant changes and restructuring aimed at improving financial sector stability and the economy. For instance the capital base for commercial banks was increased under the consolidation programme in the banking industry. As a result, through mergers and acquisition imposed on the sector by the CBN, 24 commercial banks now operate in comparison to the 89 that were operating in 2005.

530. In addition, as part of Nigeria's economic strategy to empower the poor, generate employment and reduce poverty, the CBN has taken steps to migrate the existing 536 Community Banks to 407 Microfinance Banks (MFBs). These institutions are regulated by ownership and licensing requirements and may provide a wider range of financial services than the previous community banks (such as: acceptance of public sector deposits, foreign exchange transactions, international corporate finance, and dealing in land for speculative purposes etc).

531. This consolidation process has had a further benefit of reinforcing AML measures by reducing the number of banks requiring supervision and in addition, it has enabled a process for verifying the ownership structures of the remaining banks. Factors taken into account in granting a banking license include a feasibility report, the memorandum and articles of association of the proposed intermediary, a list of share holders, directors and principal officers and their particulars, and any other information, documents and reports the CBN may from time to time specify.

532. In the case of a license to operate a financial business, all the aforementioned conditions are required except for the feasibility report. In this case the CBN may vary or revoke conditions to which a license was granted or may impose additional requirements by giving notice of its intention to the person/institution concerned. The CBN has issued a guidance note 'Requirements for a New Bank License' that set out information required from investors, sources of funding, fitness and integrity and security screening processes. The guidance note was first issued in 1998 when the embargo on banking licensing was lifted. Since 1988, the guidance note has been periodically updated.

533. According to Section 44 of BOFIA, before appointing any director or chief executive, every bank shall seek to obtain specific approval from the CBN. The Act specifies a list of circumstances that prevent a person from being appointed or from continuing to act as a director of a bank. All substantive shareholders (5% and above shareholding) are required to undergo fit and proper tests. For FIs management/board appointments, the CBN indicated that they subject appointees to fit and proper test criteria and other checks to ensure that appointees are qualified, experienced and 'fit and proper' persons.

534. The CBN is also responsible for the initial licensing of natural and legal persons that provide money or value transfer service, including currency exchange. The CBN issued revised guidelines for BDCs in May 2002 to cover issues related to the application for license, capital and management requirements. Between early 2006 and late 2007 the number of licensed BDCs increased from 293 to 542. Once licensed by the CBN, BDCs are then required to register as a member of the self regulatory body, ABCON.

535. During the onsite visit, the evaluation team noted the presence of a large informal currency exchange sector that appeared not to be operating within the formalized regulatory structure. This was confirmed during meetings with relevant organizations which indicated the view that the formal sector comprises somewhere between 55 – 65% of those offering currency exchange services.

Investment and Securities

536. Investments and securities business in Nigeria is regulated by the Investment and Securities Act (ISA) CAP 45 of 1999. This law established the SEC as the regulatory body of the sector, responsible for supervision and control both of Securities Exchange or Capital Market Points[12]. SEC in compliance with section 8 (w) ISA Rules 15 (3) approves directors and management staff employed in the capital market. Rule 71 further requires Issuing Houses in public offers to submit the list of allottees with 50,000 or 5% and above for approval. Rule 109 (A) requires public companies to file information on beneficial ownership of 5% and above.

Insurance Businesses

537. The National Insurance Commission Act of 1997 as amended in 2003 and Insurance Regulation of 2003, regulate the insurance business. The previous Act established the National Insurance Commission (NAICOM) to ensure effective regulation, supervision and control of the insurance sector in Nigeria. S.12 of the Insurance Act sets out 'fit and proper' criteria and requires that no person shall be employed as a principal officer of an insurance institution if he has been involved in any criminal conduct. A review of NAICOM's authorization show that the new processes and procedures now require all directors of insurance institutions to complete a personal history form as part of the 'fit and proper' assessment.

[12] Section 28 of ISA specified that Security Exchange and Capital Market Points include Stock Exchange and approved securities organization such as Commodity Exchange, over the Counter Market, Options, Futures and Derivatives, Petroleum and Metal Exchange.

Guidelines

Recommendation 25 – (guidelines for financial institutions other than on STRs)

538. The competent authorities responsible for regulation and supervision of financial institutions have in place a number of guidelines and regulations to assist operators to implement and comply with their AML/CFT requirements. Existing regulations and guidelines are: CBN KYCM, 2002, CBN KYC Directive 2001, NAICOM Insurance Policy Guidelines 2006, Insurance Regulation 2003, SEC Rules and Regulations 2000 as amended and FMC operational guidelines and FMC KYC manual.

539. The CBN also issued a number of circulars in relation to AML/CFT requirements. In addition to the formalized guidance notes a number of targeted outreach and training sessions have been conducted by the NFIU to assist financial institutions; these sessions have included information on current techniques, methods and trends in relation to money laundering. The NFIU also issue a regular bulletin to reporting entities which provides a source of further information.

3.10.2 Recommendations and Comments 17, 29, 23, and 25

540. **R. 17 and R. 29** – The supervisory bodies appear to have a number of enforcement and sanction powers, including sanctions against senior management and directors. However, while there is system of sanctions in place it is not clear how the regime of administrative and criminal sanctions is articulated in practice. In particular, the current number of sanctions applied appears extremely low compared to the overall reported compliance. Equally, the monetary penalty imposed for serious breaches (N2 million equivalent of USD17, 000) is not proportionate and dissuasive given the vulnerability of the sector to money laundering.

541. Furthermore, due to lack of information regarding the overall applied sanctions, the evaluation team was unable to assess whether the type of sanctions utilized were effective, proportionate and dissuasive in nature. It was unclear as to whether the range of available sanctions are sufficient and include aspects such as written warnings, issuing further directives and monitoring to ensure compliance with specific requirements and ordering of submission of regular reports on progress made so far.

542. Supervisors appear to have adequate powers to conduct inspections, but as indicated for enforcement and sanction powers, how this is articulated in practice is unclear. The statistics provided suggest that the implementation these powers are weak. The numbers of detected violations are very low and the fact that the inspections are rarely, or never, conducted for some sectors raise questions about the issue of effective implementation.

543. In consideration of these factors, Nigeria should give further thought to the objectives of its sanctioning regime, including whether it is effectively utilizing the full range of sanctions available and whether applied sanctions are proportionate to the severity of the situation. In addition, Nigeria should take steps to ensure that applied

sanctions are effectively communicated and recorded so as to improve overall compliance among those sectors that have major deficiencies. The evaluation team therefore recommended that Nigeria undertake a general review of the level and application of sanctions to ensure that they are genuinely dissuasive and effective when applied to institutions/sectors that persist in having significant weaknesses in their systems and controls.

544. **R. 23 -** The range of obliged parties subject to the AML/CFT regulation is broad, and contains the necessary financing institutions. However it is strongly recommended that the relevant competent authorities should enhance the supervisory framework including the number of onsite inspections and off-site monitoring arrangements. As currently structured the evaluation team did not find implementation of the AML/CFT supervisory system to be effective, nor does there appear to be a clear framework of inter-linkage between on and off-site monitoring.

545. With regard to resource allocation, this should commence with a targeted risk-based AML/CFT supervision framework that takes into account business focus, the risk profile and the internal control environment. In addition, it is recommended that CBN and SEC give serious consideration towards developing a more active role in AML/CFT focused inspections, thus having less overall reliance on the limited resources within the NFIU.

546. In particular the supervisory measures that are in place for prudential purposes could be further utilized in relation to AML/CFT. The evaluation team recognize that the current arrangement of joint supervisory visits with the NFIU have helped build up a body of expertise and delineate individual roles. Nonetheless there were serious concerns that the burden of responsibility is unsustainable as Nigeria moves towards developing a more effective supervisory framework.

547. In addition, the low number of inspections in some sectors reduces the overall level of knowledge that the supervisory bodies acquire on compliance and thus impacts on the future prioritization of supervisory resources. It is particularly disturbing that previous onsite visits within the Insurance sector during 2005 found more than one third of Nigerian insurance companies displaying inadequacies in basic AML requirements.

548. This presents a discouraging view, particularly in considering that the insurance sector has been subject to reduced supervision as a result of the recapitalization and consolidation process. Supervisory arrangements for BDCs institutions also require further review and enhancement, this is particularly important when considering that licensed operations have grown from 293 to 542 in the past two years. Equally, a large proportion of this sector remains unregulated. Consequently, if further steps are taken to regulate this sector it is possible that there will be further growth, thus creating greater demand for supervisory oversight.

549. **R. 25** – Nigeria has taken a number of steps to issue guidelines to assist parties to implement and comply with AML/CFT requirements. Nevertheless, the guidance issued for financial institutions appears in general to be relatively limited in scope and is more focused towards awareness raising of the relevant AML/CFT requirements, rather than providing assistance to individual sectors in their implementation of such requirements.

550. In particular the available guidance does not address all the areas of the FATF Recommendations. Furthermore reporting entities indicated that there are notable gaps on aspects such as risk identification, beneficial ownership and the identification of PEPs. Financial institutions also raised uncertainty as to regulatory expectations in their implementation of risk-based measures. Consequently, it is recommended that more guidance should be provided in this area. This guidance should be focused on ensuring that financial institutions fully understand the regulatory approach that will be taken to effectively implement their AML/CFT obligations.

551. In parallel there is also limited feed back to those parties required to report STRs, and this feedback does not provide adequate national trends analysis information. Sufficient STR feedback is further inhibited by an overall reliance on CTR reporting (see Recommendation 13).

Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of Factors Underlying Rating
R.17	PC	• While there is a system of sanctions in place, due to the relatively low number of compliance monitoring carried out in some sectors there are serious concerns regarding effectiveness • It is also unclear how the regime of administrative and criminal sanctions is articulated in practice. • The number of the overall sanctions implemented to date is very low. • Applied sanctions are not considered to be effective, proportionate or dissuasive. • No sanctions have been implemented in the capital market sectors.
R.23	NC	Market Entry • There is a significant number of 'informal' currency exchange providers operating in an open and unregulated manner Supervisory programmes and procedures • CBN/SEC: The number of inspections specifically focused on AML/CFT matters is very low, and a significant number of sectors seemed to have escaped supervision of compliance

		with its AML/CFT obligations • CBN/SEC: there appears an over reliance on the NFIU for the delivery of ongoing onsite AML/CFT supervisory programmes a factor which may be negatively influencing the effectiveness of the overall AML/CFT framework • CBN/ABCON: the current supervisory programme for bureau de change raises serious doubts in terms of the number of inspections carried out for AML/CFT purposes and overall effectiveness • CBN: The determination of supervisory oversight beyond the commercial banks does not adequately take into account AML/CFT risks, and therefore there are serious concerns about the adequacy of supervision arrangements for community banks and other financial institutions such as primary mortgage institutions, finance companies and bureau de change • NAICOM: due to recapitalization and consolidation within the insurance sector there have been no AML/CFT specific inspections since 2006. Uncertainty over a timetable for future inspections remain and therefore the effectiveness of current and future measures cannot yet be assessed.
R.25	NC	• The guidelines in place are relatively limited in scope and do not address some essential areas of the FATF Recommendations. Greater attention should be given to the requirements to conduct ongoing CDD and the need to pay particularly attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21 • Consideration could be given to further utilizing the NFIU newsletter to include more systematic feedback in the form of statistics and typologies as they relate to Nigeria. • The sector specific feedback is weak and ineffective. • There is insufficient feedback on STRs received and regular information on typologies provided to reporting entities
R. 29	PC	• Supervisory bodies have the powers to conduct compliance inspections; however AML/CFT compliance inspections for a number of sectors are rarely conducted thus the existing powers remain untested and ineffective. • The number of AML/CFT inspections conducted and the number of violations detected are very low considering the size and vulnerability of covered institutions to money laundering.

3.11 Money of value transfer services (SR VI)

2.7.1 Description and Analysis

Special Recommendation VI

552. The CBN is empowered by Section 2(1) of the Banks and Other Financial Institutions Act of 1991 (BOFIA) to be the only authorized entity that can issue a banking license to any person or entity that wishes to operate a banking business in Nigeria. According to this law, the CBN is also responsible for conducting regulatory oversight of all licensed banks and bank operators in Nigeria. Furthermore, Paragraph 4.2 of the CBN Guidelines on Electronic Banking states that only banks that are licensed by the CBN are permitted to conduct money or value transfer (MVT) services. Independent money or value transfer service operators or agents are not permitted in Nigeria.

553. Representatives from the CBN stated that during their regular onsite examinations of banks, compliance with relevant portions of both the CBN Guidelines on Electronic Banking and the BOFIA are checked. In practice, however, representatives from the banking sector stated that only large banks have the capacity to offer money or value transfer services; community banks, on the other hand, only offer deposit type services that are made in the local currency (Naira). It is unclear how the CBN checks compliance for money or value transfer services, as the current guidelines only provide the threshold amounts of wire transfers that would require reporting to the NFIU. It is also unclear if banks offer alternative MVT services besides wire transfers. At the time of the onsite assessment, banks in Nigeria were not providing electronic banking services. Should Nigerian banks decide to offer such services in the future, then the CBN Guidelines on Electronic Banking would be applied.

554. Large banks are the only financial institutions that are capable of providing MVT services in Nigeria, and a list of which particular banks offering such services at their institutions are maintained by the Central Bank of Nigeria. The CBN has provided Guidelines on Electronic Banking to their FIs in an attempt to provide guidance on what due diligence procedures must be followed to ensure proper risk monitoring and compliance. However, upon review of this guidance, the assessors found that the E-Banking Guideline lacked sufficient procedures to help FIs identify and mitigate the risks involved in such electronic payment methods. Rather, the guidance to banks that offer MVT services merely provides information regarding the reporting thresholds for wire transfers.

555. These large banks that offer MVT services are still subject to the same applicable FATF 40 Recommendations and 9 Special Recommendations as stated throughout this report. However, since Nigeria is not in full compliance with all these pertinent FATF Recommendations, the assessors were of the belief that large banks that conduct MVT services were not fully regulated in accordance to the FATF standards for financial institutions.

In relation to the criteria contained in Recommendation 17, it is unclear if any sanctions have been imposed upon any large bank that has failed to comply with the obligations under this Special Recommendation as this data was not available to the assessors for their review. The legal penalties and fines for operating banking services (under which MVT services would apply) without a license are stated under Section 2(2) of the BOFIA as: *"Any person who transacts banking business without a valid license under this Decree is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 10 (ten) years or to a fine of N2, 000,000.00, or to both such imprisonment and fine."* The assessors could not determine, however, if any such penalties or fines have been applied to any banks for failure to comply with the stated obligations under this recommendation for MVT services.

2.7.2 Recommendations and Comments

556. Only banks that are licensed by the CBN are permitted to conduct money or value transfer (MVT) services. Independent money or value transfer service operators or agents are not permitted in Nigeria. Although Nigeria has the legal provisions for authorizing and regulating MVT services within the auspices of financial institutions, it is unclear how compliance with the CBN's guidelines and the law is checked. It is also unclear if banks offer alternative MVT services besides wire transfers.

557. The E-Banking Guideline produced by the CBN lacks sufficient procedures to help FIs identify and mitigate the risks involved in such electronic payment methods. Rather, the guidance merely provides information regarding the reporting thresholds for wire transfers. It is recommended that clearer guidelines be provided to financial institutions to ensure that their operations for wire transfers, MVT services, and future e-banking are all in compliance with the FATF standards. The assessors believe that large banks conducting MVT services are not fully regulated in accordance to the FATF standards for financial institutions since Nigerian FIs in general lack sufficient compliance with the FATF 40+9 Recommendations overall. The assessors also could not determine if any sanctions, penalties or fines have been applied to any banks for failure to comply with the stated obligations under this recommendation for MVT services.

2.7.3 Compliance with Special Recommendation VI

Rec.	Rating	Summary of Factors Underlying Rating
SR.VI	**PC**	• Legal requirements exist to ensure that financial institutions that offer money or value transfer services are registered with the CBN. However, how the CBN determines FIs' overall level of compliance with the law is unclear. • Guidance on how to ensure compliance with the FATF standards for money or value transfer services is unclear. Current guidance for MVT services is limited and only provides the threshold amounts for reporting wire transfers.

		It is unclear if the any sanctions, penalties, or fines have been enforced upon FIs for any instances of noncompliance with the FATF standards.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFPBS)

Basic legal obligations

558. The obligations laid in the relevant AML laws apply to the non-financial professionals and businesses. Sections 24 of the MLP Act and Section 46 of the EFCC Act lists DNFBPs to include - Casinos, Dealers in Jewelry, Cars and Luxury goods, Chartered/Professional accountants, Audit firms, Tax Consultants, Clearing and Settlement Companies, Legal Practitioners, Supermarkets, Hotel and Hospitality Industries, Estate Surveyors and Valuers, Precious Stones and Metals, Trust and Company Service Providers, Pool Betting, Lottery, Non-Government Organizations and Non-Profit Organizations. This may also include such other businesses as the Federal Ministry of Commerce may from time to time designate.

4.1 Customer due diligence and recording keeping (R.12)

Recommendation 12, applying R. 5, 6, 8 - 11,

Description and Analysis

559. All the general duties that are required of financial institutions also apply to DNFBPs. The same deficiencies in the implementation of Recommendation 5, 6 and 8-11 that are outlined under those individual recommendations also apply to non-financial businesses and professionals. The MLP Act, section 4 and section 5 require casinos and other businesses and professions to verify, and record the identity of customers, including the nature of business and amount involved in each transaction. In the case of casinos there is also a mandatory requirement for anybody entering the casino to be identified and registered at the time of initial entry, in addition whenever customer purchases cash with chips or tokens above the threshold of $5000, a CTR is reported to FMC in accordance with the MLP Act. The same requirement to report CTRs above the threshold of $5000 is applicable to all DNBPS in Nigeria.

560. As with financial institutions, the mechanisms used for checking customer identification could either be an international passport, driving license, national identity card, bearing a photograph and physical address. The MLP Act requires verification and registration to be done at the point of introduction of the business and when the transaction exceeds USD 5,000.

561. The MLP Act, Section 5 requires all DNFBPs to keep a register of names of customers and business transactions exceeding USD 5.000 for 5 years after the last transaction. The availability of such information to the authorized authorities should be made within 7 days of a request; the FIU may also have direct access to the information.

562. MLP Act Section 6(1) and (2) requires that when a transaction, which may or may not relate to money laundering or illegal activity or crime are conducted in conditions of "unusual or unjustified complexity or appear to have no economic justification or lawful objective," then the DNFBP would be required to compile a report containing all relevant information, including the identity of the principal, and where applicable the beneficial owners. The report shall be forwarded to the FIU.

563. MLP Act Section 6(2) (a), (b), and (c) requires that when DNFBPs detect a complex or unusual transaction that they draft a report containing all relevant information on the modalities of the transaction, the identity of the principal and of the transacting parties. MLP Act Section 7 requires that reporting entities keep a copy of the report for five years following the "execution" of the transaction."

4.1.2 Recommendations and comments

564. The same deficiencies in the implementation of Recommendation 5, 6, 8, - 11 also apply to non-financial businesses and professions, therefore Nigeria should ensure that shortcomings as identified under those Recommendations are equally addressed in the case of DNFBP's.

565. The evaluators advise that particular attention should be given to FATF requirements regarding the conduct of enhanced due diligence, beneficial ownership, PEPs and ongoing monitoring, as most DNFBPs seemed unclear on their requirements surrounding these obligations. The identification and ability of DNFBPs to identify high risk customers was an area of significant concern to the evaluation team.

566. In relation to casinos this sector is currently in its infancy; however the authorities should ensure that verification of identification and on-going monitoring arrangements for high risk customers meet the required standard.

4.1.3 Compliance with Recommendations 12

	Rating	Summary of Factors Underlying Rating
R.12	NC	• Beyond basic customer identification and record keeping requirements the DNFBP sector appear unclear as to their wider CDD obligations • Limited practice of Casinos performing enhanced due diligence for higher risk customers, nor is there adequate procedures in place for verification of customer's identity • The same deficiencies and comments made previously for action by Nigeria with respect to Recommendations 5,6 to 8 – 11 are also applicable for the DNFBP

4.2 Monitoring suspicious transaction reporting, R. 16 (Applying R13 – 15 & 21)

Description and Analysis

Recommendation 16

567. Section 6 of the MPL Act 2004 requires all financial institution and designated non-financial institutions to report all suspicious transaction to the EFCC/NFIU. The DNFBPs in the Nigerian context cover estate agents lawyers, accountants, casinos supervised by the FMC/SCUML. Accountants, Lawyers and Estate Agents through their SROs (ICAN, NBA, and NIESV) develop rules; guidelines; and code of conduct for their members (refer to paragraphs 77 to 87).

Reporting to FIU (C.13.1 – 4)

568. Under section 6 of the MLP Act 2004, all financial institutions and DNFPBs are required to draw up a written report containing all relevant information on transaction or suspicious transactions whether or not it relates to the laundering of the proceeds of crime or an illegal act for submission to the NFIU within 7 days after the transaction.

569. In accordance with section 5(1)(c) and (2), DNFPBs whose business involves the one of cash transaction shall record all transactions under this section in chronological order and forward same to the Federal Ministry of Commerce for onward reporting to the NFIU within 7 days of its receipt. In addition, section 5(4) empowers the Minister responsible for Commerce to make regulation for guiding the operating of designated non-financial institutions. The NFIU, under section 5(5), has the powers to demand and receive reports directly from such designated non-financial institution.

Protection for reporting suspicious transaction and protection of tipping off (C.14.1 – 2)

570. There is no provision explicitly providing for the protection of person who report in good faith in the MLP Act. Under Section 39(1) of the EFCC Act, protection is provided to informants to the extent of securing their identities by the officers of the commission except by Court- order. Section 39 (d) of the EFCC Act provides protection and authority to persons receiving information under the Act whilst section 41 provides immunity for law enforcement officer in the cause of investigation and prosecution.

571. Under section 15(1) of the MLP Act, it is an offence for any person in the capacity of a Director, officer or employee of FIs and DNFPBs to warn or intimates the owner of funds reported under suspicious transaction. The offence is punishable to a jail term of not less than 2 years in line with section 15(2) of the MLP Act.

Internal controls, compliance and audit (C.15.1 – 4)

572. The MLP Act under section 9 requires financial institutions to develop programmes to combat the laundering of proceeds of crime or illegal acts through the

designation of compliance officers, regular training and establishment of internal audit unit. This provision of the Act does not cover DNFPBs.

Special attention to relationship involving countries that inadequately applying AML/CFT measures and counter- measures (C.21.1-3)

573. There is no provision in the laws or regulation in Nigeria requiring institutions to pay special attention to relationship and transactions with persons from countries which do not apply or insufficiently apply the FATF recommendations. There are equally no measures in place to ensure that institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. Assessors noted that there is a general lack of knowledge of this recommendation in Nigeria. The notion is that countries that do not apply FATF standards are those in the NCCT list. There are no counter-measures to be applied in Nigeria in instances where a country fails to apply or insufficiently applies the FATF standards.

Recommendations and Comments

574. DNFPBs are required by the MLP Act to report suspicious transaction, however, the supervision and monitoring is still at the early stage and therefore considered very weak by the assessors. SCUML is presently working with the DNFPBs and their SROs to develop appropriate policies and procedures for the prevention of ML/TF in that sector. There is no legal provision requiring DNFPBs to observe internal controls, develop training policies, conduct training, appoint compliance officers or institute audit functions.

Compliance with Recommendation 16

Rec.	Rating	Summary of Factors Underlying Rating
R16	NC	• There is no legislation explicitly protecting persons who report in good faith. • There is no provision in the law requiring DNFPBs to observe internal control, appoint compliance officer or develop training programmes • There is no effective supervision of DNFPBs yet in the prevention of ML/TF.

4.3 Regulation and Supervision

4.3.1 Description and Analysis

Recommendation 24

Overview of DNFBP supervisors

575. The Federal Ministry of Commerce (FMC) under Section 5 of MLP Act 2004 has powers to monitor all DNFBPs in Nigeria and ensure appropriate compliance with AML/CFT requirements.

576. Under section 5(6) of the MLPA, the FMC can impose sanctions on defaulting DNFBPs. In addition Section 7(2) of the EFCC Act, 2004 empowers the Commission to prosecute any designated non-financial institution for any breach of the MLP Act. In September 2005, SCUML was established by Decision No EC (2005) 286 of the Federal Executive Committee as a specialized unit of the FMC, with responsibility for supervising DNFBPs. Consequently, SCUML has been mandated to monitor, supervise and regulate the activities of all DNFBPs.

577. The FMC in implementing the MLP Act 2004 has developed the FMC/SCUML register for all casinos in Nigeria. Currently, the list includes four registered casinos. During the onsite visit the evaluation team was advised that whilst the casino sector is not significant in size, the number exceeds four and includes a number of small 'underground' casinos.

578. In relation to measures undertaken to prevent criminals or their associates from holding controlling interests of casinos, the Nigerian authorities indicated that it would be difficult for beneficiary owners of casinos not to be 'fit and proper' due to the regulation and monitoring framework of the FMC/SCUML. However, this view was not reflected by the sector itself and there were general concerns also raised with the evaluation team as to the robustness of 'fit and proper' tests and general market entry requirements. Furthermore there is no singular licensing procedure that governs the whole country thus procedures vary depending on the individual state.

579. In performing its ongoing monitoring requirements SCUML has undertaken a number of recent steps to categorize the allocation of future supervisory resources. This has included a risk review of the DNFBP sector and the implementation of a three staged monitoring process that includes:

Stage One

a) Registration of reporting entities
b) Enlightenment programme/issuance of guidance

Stage Two

c) Receipt of CTRs and input into database
d) Evaluate CTRs
e) Escalate CTRs to STRs
f) Forward escalated STRs to NFIU

Stage Three

g) Carry out on-site and off-site inspection
h) Post-Inspection Report/Evaluation
i) Recommendation of Sanctions/Commendation Letters
j) Enforcement of Sanction/Issuance of Commendation Letters

580. To implement its programme SCUML's staff structure has been increased within the past 12 months and is now made up of 25 compliance offices, 14 public relations officers and 5 dedicated CTR/STR analysts, thus creating a current overall staff of 44. To ensure there is sufficient expertise within the enhanced staff structure, SCUML has implemented a 'training and human capital development programme". SCUML has also taken steps to utilize the role of the SRO's to further enhance awareness raising, compliance and monitoring amongst the various DNFBP's. This has included a programme for public-private sector engagement and the recent establishment of the DNFBP Advisory Council. In consideration of vulnerability of sectors to money laundering, SCUML has incorporated supermarkets, hotels and hospitality industry within the AML regime. These additional sectors have expanded the number of reporting entities beyond the FATF categories that are subject to the same requirements as those required by FATF.

Onsite SCUML/NFIU Inspections of DNFBPs

Sectors	Year 2006	Year 2007
Estate Surveyors & Valuers	2	4
Hotels & Hospitality Industries	32	16
Casinos	3	2
Professional Accountants	5	1
Cars and Luxury Goods	15	8
Jewelry Dealers	1	1
Supermarkets	0	5
Legal Practitioner	0	1
Total	58	37

581. At the time of the onsite visit, no sanctions had been imposed on the DNFPB sector; instead the current focus of SCUML was predominantly towards a programme of promoting registration, enlightenment and publicity of AML/CFT obligations for the sector. SCUML did indicate to the evaluation team that they intend to utilize available

sanctioning mechanisms from December 2007 onwards as a means of improving compliance with AML/CFT legislation. The future mechanism for applying sanctions will be lead by SCUML, and recommendations will be submitted to the Honorable Minister for final approval.

Recommendation 25 – *(Guidance for DNFBP other than guidance on STRs)*

582. The FMC have issued operational guidelines and a KYC manual. SCUML has also disseminated guidelines to the DNFBPs through the DNFBP Advisory Council, which is made up of the leadership of relevant trade associations otherwise known as self-regulatory organizations. In addition, a number of targeted outreach and enlightenment sessions have been conducted by both the NFIU and SCUML to assist DNFBPs; these sessions have included information on current techniques, methods and trends in relation to money laundering.

583. SCUML have also set out an ambitious future work programme through its enlightenment and publicity department that aims to enhance effectiveness of the guidance provided to DNFBPs. Relevant activities that aim to assist DNFBPs to comply with their obligations include a planned sensitization and awareness campaign, press interviews, outreach seminars, typology exercises and the development of effective intervention strategies.

Recommendations and Comments R.24 & R.25:

584. **R.24** – The overall DNFBP's supervisory framework is clearly in a transitional stage, and whilst a number of essential criteria are in the early stages of implementation, the evaluation team was nonetheless impressed by recent initiatives in this sector. The evaluation team also noted that the future work programme of SCUML is ambitious and its successful implementation is dependent on the availability of adequate resources and suitable risk based strategy. Considering the size of the DNFBP sector SCUML should continue to further enhance its utilization of the self regulatory bodies as a means of raising awareness and increasing compliance.

585. In implementing the essential criteria of Recommendation 24, SCUML should ensure that there are adequate measures and national procedures in place for the licensing and ownership of casinos. In particular the robustness of 'fit and proper' tests and general market entry requirements should be reviewed. The number of compliance inspections for the DNFBP sector is still extremely low and the current focus appears to be on publicity and awareness visits. Subsequently, there is no effective, proportionate or dissuasive sanctions regime in place. Furthermore, the operational independence of SCUML in the application of sanctions is yet to be tested.

586. **R. 25** (***Guidance for DNFBP)*** – Nigeria has taken a number of steps to issue guidelines to assist parties to implement and comply with AML/CFT requirements. The evaluation team also noted, and was impressed by, SCUML's future work programme on

typology exercises, information sharing and enhanced public-private dialogue. Once implemented it is envisaged that such programmes will have a considerable impact on ensuring guidance is effectively channeled to the DNFBP sector.

587. Nonetheless, in assessing the current situation, it appears that the available guidance is relatively limited in scope and is more focused towards awareness raising of the relevant AML/CFT requirements, rather than providing assistance to individual sectors in their implementation of such requirements. In particular the available guidance do not address all the areas of the FATF recommendations, furthermore reporting entities indicated that there are notable gaps on aspects such as risk identification, beneficial ownership and the identification of PEPs.

588. In parallel there is limited feedback to entities required to report STRs, and this feedback does not provide adequate national trends analysis information. Sufficient STR feedback is further inhibited by an overall reliance on CTR reporting (see Recommendation 13 and 16).

Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of Factors Underlying Rating
R.24	PC	• For casinos, there are inadequate measures to prevent criminals/associates from holding or being the beneficial owner of casinos. • The number of compliance inspections for the DNFBP sector is extremely low and the current focus appears to be on publicity visits on AML/CFT awareness programs. Therefore, for the moment, there are no effective systems in place for the oversight and supervision of compliance with AML/CFT obligations in most of the non-financial sector • There is need to enhance the SRO sector which would in turn raise the level of compliance in sectors • The sanctions regime has yet to be implemented and therefore remains untested in relation to effectiveness and operational independence.
R. 25	NC	• The guidelines in place are relatively limited in scope and do not address some essential areas of the FATF recommendations, greater attention should be given to the requirements to conduct ongoing CDD and the need to pay particularly attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21 • Sector specific feedback could be further enhanced, although it is noted that SCUML has in place a planned programme of future action

		• There is no feedback on STRs received and irregular information on typologies currently provided to reporting entities

4.4 Other non- financial businesses and professions (R.20)

4.4.1 Description and Analysis

Recommendation 20

589. Under Section 24 of the MLP Act, non-financial businesses and professions (other than DNFBPs) are covered by the same legal mandates that apply to all "designated non-financial institutions." Specifically, Section 24 of the law includes a provision in the definition of DNFBPs including tax consultants, hotels, and supermarkets and for "other such businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate."

590. Nigerian authorities are currently contemplating taking measures to use more advanced techniques to secure financial transactions conducted by non-financial businesses and professions. However, at the time of the onsite assessment, no formal steps had been taken to implement such measures. For this reason, the provisions of this Recommendation are not applicable to Nigeria's non-financial businesses and professions.

4.4.2 Recommendations and Comments

591. The provisions of this Recommendation are not applicable to Nigerian non-financial businesses and professions. Although there is a legal provision that applies the same mandates for DNFBPs to non-financial businesses and professions, Nigeria is still in the early stages of contemplating the use of more advanced secure transaction techniques with such entities.

4.4.3 Compliance with Recommendation 20

Rec.	Rating	Summary of Factors Underlying Rating
R.20	**PC**	• Nigeria has "considered" the application of AML measures to other institutions—hotels, car dealers, super markets and for such other businesses as the FMC/SCUML may designate from time to time. • Nigeria has not implemented modern secure transaction techniques for use by non-financial businesses and professions.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Recommendation 33

592. The Companies & Allied Matters Act, 1990 (CAMA) is the legal framework for the registration of legal persons including trust companies, foundations, charities and NGOs. The Corporate Affairs Commission (CAC) is responsible for the implementation of the CAMA across the private and public sector institutions. CAC is a specialized agency under the Federal Ministry of Commerce. It has offices in 34 states out of 36 states in the country, with its corporate headquarters located in Abuja, the Federal Capital.

593. Since 2001, Corporate Affairs Commission, the government agency charged with the registration of businesses in the country has improved its operations in line with modern technology by migrating from manual registration process to electronic registration system. This innovation has not only stopped abuse of processes and corruption in company registration, which was prevalent in the past, it has also reduced the time required for company registration in the country. .

594. Authorities reported that CAC has maintained its position as the best *"Federal Government Agency"* in service delivery. In a recent survey of federal agencies conducted by SERVICOM – a government agency with the mandate to ensure efficient service delivery in the public service – CAC was rated the best in service delivery for the second time in two consecutive years.

595. CAC's service delivery record recently received international commendation by the United Nations Commission for Trade and Development (UNCTAD) and the United States Agency for International Development (USAID). It has been described as performing within "European standard" and has maintained world-class records, particularly given that it is able to register companies online in real time.

596. CAC offers e-payment card which will enable customers pay and get services from any location in 24 hours/7 days a week without having to visit CAC's office. The website for registration is www.cac.gov.ng or www.cacnigeria.org. Enquiries can be forwarded to cservice@cac.gov.ng.

597. Recently, as part of its mandate under Section 525 of CAMA, CAC commenced the process of reviewing companies that are dormant or have failed to file annual returns

since incorporation in order to strike out non-performing ones from the list of companies in its data base. About 400,000 companies were identified as dormant out of six hundred and sixty one thousand, eight hundred and sixty (661,860) companies registered by CAC as at July, 2007.

Statistics of registered companies and businesses as at July, 2007

Companies	Business Names	Incorporated Trustees	One stop investment shop registration	Types of changes made by companies	Number of changes
661,860.000	24,525.000	2,011.697	27	Change of names	337
				Mortgages	544
				Increase in share capital	1,971
				Certified true copies issued	99,908
					102,760 recorded changes

598. As part of the government reform process, a ***"One Stop Shop for Investors"*** was established to simplify procedures required in starting and closing business in Nigeria. So far, CAC has registered 27 companies under this mechanism and this is boosting investment in the country.

Registration Process

599. Having offices in almost all the states in the country have enhanced access by majority of Nigerians seeking to register business names. Particulars of legal persons can be checked through a search at the Commission's registry.

600. For registration of a company limited by shares, the Commission by virtue of Section 35 of CAMA requires that the following information be submitted to it,

- Memorandum and Articles of Association;
- Names and Addresses of shareholders;
- Particulars of Directors and their consent;
- Notice of address of registered office of the company; and
- Statement of authorised share capital signed by a director and a statutory declaration of compliance by a legal practitioner.

601. In addition, Sections 31, 44 to 49 of CAMA require companies to update change in share holders from time to time. The companies are also required to submit annual returns in respect of activities undertaken every fiscal year. This is a way of tracking changes that have occurred in the management or board of registered companies. The requirement and procedure for registration of Business Names and Trustees are provided in Parts "B" and "C" of the CAMA. There is a registry of Business Names in each State of the Federation where searches can be conducted on the payment of the prescribed fee. Changes in the particulars at the registry for each Business Name must be registered. Incorporated Trustees and changes in name and objects have to be registered too.

602. Every limited liability company incorporated in Nigeria as well as nonresident organizations doing business in Nigeria is required to register for tax. To fulfill the

requirements of "know your customer", information related to the company such as, incorporation number, a copy of the certificate of incorporation, details of shareholders (ownership), directors, nature of business, registered address, business address, major customers, bankers, statutory auditors, tax consultants, date of commencement of business, branches, local and foreign associates/subsidiaries, are obtained and documented. They are also required to file tax returns annually. This will help in tracking the business transactions of a company to ensure that tax is not evaded and laundered.

Types of companies that can be registered with CAC

603. There are four types of companies that can be registered by CAC

- Private Limited by Shares (LTD)
- Public Limited Company (PLC)
- Unlimited Company (ULTD)
- Company Limited by Guarantee (LTD/GTE)

Others

- Business Names (covers "partnership" registration)
- Incorporated Trustees

604. CAC Mandate include

- Registration of companies, business names, non-profit organizations and Trustees; Conduct of search for interested persons;
- Issuance of certified true copies of extracts of filed documents;
- Registration of increase in share capital, mortgages, debentures and charges;
- Processing the statutory filings of –annual returns, alteration of memorandum and articles of association and addresses;
- Change of names of directors;
- Registration of change of name;
- Change of particulars of allotment;
- Change of registered office address;
- Registration of receivership;
- Registration of appointment of liquidators;
- Statement of affairs (section 636);
- Conducting investigation into the affairs of any company, business names or incorporated Trustees;
- Supervising the management and winding up of companies;
- Enforcing compliance with the provisions of CAMA by corporate bodies; and
- Accreditation of lawyers, chartered accountants and chartered secretaries who are the direct users of the services of CAC

Membership and allotment of shares by companies

605. The minimum membership of each company is two and the maximum for private company is fifty members while there is no limit for public companies. A minimum share capital of ten thousand (N10, 000) naira is prescribed for private companies and five hundred thousand (N500, 000) naira for public companies with a minimum subscription of 25% of the authorized share capital respectively.

606. There are two forms of companies that constitute a challenge in its registration and identification of beneficial owners under the CAMA. They are Companies Ltd by Guarantee (LTD/GTE) and Incorporated Trustees.

607. LTD/GTE is a company that is registered without shares and is a vehicle used by most non-profit organizations in Nigeria. This is because the process for registration is less tedious than Trustees. They are allowed to make profit which cannot be shared but only used for the purpose for which the company was set up. The fiat of the Attorney General is required to register a LTD/GTE company.

Process for registration and identification of owners of LTD /GTE Company or organization

- Submission of duly completed form with passport pictures of the board members
- Verification and assessment of online forms
- Payment of filing fees
- Submission to Attorney-General's office
- AG verifies to ensure that the objectives of organization is legal – if legal approves registration and forwards to CAC for issuance of certificate

608. The assessors were informed that it is not the duty of CAC to verify the names or those behind a company beyond what is submitted to them. However, the applicants are required to sign a form and swear to an affidavit that all information in the form is true. If it is eventually found out that there was a breach of the oath as a result of false information provided by an applicant, the person would be referred to the appropriate law enforcement authority for prosecution. Any changes in the board of the organization must be filed with CAC through the submission of Form CO2. Failure to do so will attract appropriate penalties.

609. CAC stated that given its automated system of registration, it is very easy for it to update its records and check the names of companies that fail to comply with requirements for registration.

Transparency mechanism

610. All records are kept in a Central Registry maintained by the Corporate Affairs Commission (CAC). Access to these records is open to the public on the application of the person desiring to obtain information. There could be a request for information by

law enforcement agencies or a company search conducted by an officer of a law enforcement agency after the payment of a nominal fee.

612. There are no restrictions on competent authorities to share such information with other competent authorities locally and internationally. Finally, the Nigerian company law admits the Common Law principle of lifting of the "veil of incorporation" to discover the true ownership of legal persons even at the investigation stage.

613. SEC Rules 7(1) & (2); 109A and 225(8) require full disclosure of ownership shareholding and any beneficial legal persons. S.8(r) empowers the SEC to share such information with competent authorities, domestically or internationally. The Corporate Affairs Commission is charged with the regulation and supervision of the formation, registration, management and winding up of companies.

Access to Information

614. The CAC keeps information on all legal entities. There are no restrictions on competent authorities to access such information. With regards to incorporated Trustees, it is mandatory for all legal entities to file annual returns, which gives current information on the entity. There is also a requirement to promptly file "Notification of Changes" in company records as soon as they occur.

615. CAC requires that every company should keep at its registered office, a register of members with information on the names, address of each shareholder, the number of shares that he holds and the date that each person becomes or ceases to be a member. The register is updated once there is a change in the information provided to CAC. The register is open for inspection by members of the company or the public. However, there is no requirement for beneficial ownership information to be collected by CAC or stored by the companies themselves.

616. Companies may require any member to declare in what capacity he holds any shares other than as a beneficial owner. Also, a company must keep at its registered office, a register of the directors and secretaries.

617. SEC Rules 7(1) & (2); 109A and 225(8) require full disclosure of ownership of shares and any beneficial legal persons. S.8(r) empowers the SEC to share information with competent authorities, domestically or internationally. CAC cooperates actively with the Tax authorities and has a Memorandum of Understanding with Federal Inland Revenue Service (FIRS) for the prompt sharing of information and filing of annual returns.

Bearer Shares

618. The CAMA sets out adequate protection for holders of all types of shares. Bearer shares are not a type of share known to Nigerian law.

Reliance on investigative powers

619. By virtue of Sections 7 (1) (c), 314, and 315 of CAMA, CAC can conduct investigations on any registered company when it has information that such a company is not complying with the CAMA requirements and guidelines issued by CAC. The powers to conduct investigation can only be invoked where 25% of those holding shares in a company or 1/3rd of members in the case of body without shares files a complaint at the CAC. The company may also invite CAC to undertake an investigation. Under exceptional circumstances, and where there is need to protect shareholders and the public, CAC is empowered to invoke its powers to investigate the affairs of a company. However, there are limited measures in place to ensure that there are adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

620. CAC can award fines as penalty against erring companies. It may also file a civil action in the court to compel compliance with the CAMA provisions.

621. However, if it is ML, FT, fraud or corruption related case or indeed any other crime, CAC may report to the EFCC, NFIU, ICPC, Attorney General or the Police. CAC has an understanding with the EFCC and requests from EFCC, ICPC, and NFIU are given priority. This relationship is enhanced through CAC's representation on the EFCC Board and posting of CAC official to NFIU.

622. The NFIU has access to CAC's data base of registered non-for –profit organizations. This information is helping the FIU to profile and conduct review of NGO's objectives and activities in the country, including beneficial ownership without restriction. Recent AML cases, which were filed in the courts, have the names of corporate bodies listed as suspects. This was made possible by the ability of CAC to identify those using corporate vehicles to conceal their illicit wealth. Once the company is convicted, CAC would de-list the convicted company and commence the process of winding up as required by CAMA. The EFCC have not provided the list of corporate bodies convicted for money laundering.

5.1.2 Recommendations and comments

623. CAC has met requirements of R. 33, particularly in the area of access to information in its data base, transparent registration process – including online and physical registration processes, removal of undue restrictions opening of more avenues such as the "one stop investors' shop to facilitate enhanced access to its services. Information is available to law enforcement agencies and competent authorities and members of the public. However, there are limited measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

624. Its statistics are comprehensive and the online registration process has empowered it to track non-performing companies, which may be used for laundering or terrorist financing. Finally, the assessors noted that the legal framework in terms of company registration meets international standard. CAC needs to increase fines awarded as penalty for erring companies which are currently very low so that this may act as a deterrent factor and serve the purpose it seeks to achieve.

5.1.3 Compliance with Recommendation 33

Rec.	Rating	Summary of Factors Underlying Rating
R.33	**LC**	• While the investigative powers are sound, there are limited measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. • Information on the company registrar pertains only to legal ownership/control (as opposed to beneficial ownership), is not verified, and is not necessarily reliable. • Fines awarded as sanctions are low.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

625. Nigerian commercial laws have a mechanism in respect of legal persons, which is not adequate to ensure that beneficial owners (BOs) of legal arrangements can easily be identified. Nigeria's mechanisms for the registration of express trusts mostly reside with the Land Registry located in every state of the federation. This process is governed by the Land Use Act of 1979. Unfortunately, the process of registration is not centralized and information is difficult to extract as most of the records are manually stored.

Process for registration of Incorporated Trustees and identification of beneficial owners.

Stage I:

626. Persons requesting to register incorporated trustees must complete the required forms, and publish information related to the board members of the trustees, names, and

objectives and address of the Association in 3 Daily Newspapers (2 national newspapers and 1 local newspaper). The publication in the newspapers lasts for 28 days and provides opportunity to the public to object to the registration.

627. Where there is no objection, the Trustees would go to the next stage of filing additional documents to CAC.

Stage II:

The documents to be forwarded to CAC include

- A formal letter of application signed by the Chairman, Secretary or applicant's solicitor
- Original copies of newspaper publication
- 2 copies of applicant's constitution
- Minutes of the meeting where the Trustees were appointed, having list of members, present and absent and showing the voting pattern signed by the Chairman and Secretary of the Board. The minutes must be on the letter head of the Association.
- Minutes of the meeting where the special clause rules was adopted into the constitution of the Association, signed by the Chairman and Secretary showing list of members in attendance.
- Two passport photographs of each of the Trustees – 1 picture to be attached to the IT declaration form to be sent to the High Court for application of oath. (applicants must attach receipts from court) before submitting to CAC

- Trustees are to sign against their names on the application form, indicating permanent residential addresses, and their current occupation.

628. The tedious processes for registration of incorporated trustees have improved availability of information in relation to beneficial ownership and other legal arrangements. The current situation can be improved through the issuance of guidelines and review of the existing laws to incorporate best practices.

Transparency Mechanism

629. Information is available for inspection or use by law enforcement agencies, other competent authorities, and members of the public. CAC shares information internationally through Company Registrars in other countries and responds to requests from embassies, international organizations, and corporate bodies nationally and internationally.

Access to Information on Beneficial Owners of Legal Arrangements

630. Information on beneficial owners and legal arrangements are available to any requesting person, where they exist. However, the assessors were informed that it is not the responsibility of CAC to register express trusts but CAC can register incorporated

trustees and applies all the available transparent mechanism, ranging from endorsement by the court, publication in the newspaper and provision of access to such documents to anybody requesting same.

631. Since most trusts are registered by trust providers, and lawyers, the Nigerian Bar Association stated that where BO information is not available at CAC or land registry, the law enforcement agencies can compel the trust providers or the organization in whose custody the document resides to produce the information about BOs or those behind legal arrangements. Thus, it seems that in the absence of adequate and explicit guidelines on beneficial ownerships and trusts, information which is not publicly held can only be obtained through a court order or reliance on investigative powers of LEAs.

Reliance on investigative powers

632. Same as described above under R.33

Information retained by AML/CFT regulated businesses as part of their compliance obligations

633. Lawyers and other providers of trust services are under obligation under the MLP Act to provide information about trusts and financial transactions conducted on behalf of their clients. Lawyers are also required to report either through the FMC/SCUML or through their SRO (NBA). The NBA reported that they are currently working with the SCUML and LEAs to develop an enhanced reporting mechanism, whilst respecting their obligation to their clients.

634. While information on BOs and legal arrangements may not be easily available, enforcement agencies can and do rely on existing powers to request for such information in the course of investigation. Several AML related cases which were filed by EFCC indicate that lawyers were always willing to provide such information where it exists. There is need however for enhanced information sharing and training between CAC, the Land Registry, the NFIU, LEAs, NBA and practitioners involved in the registration of express trusts, and legal arrangements.

Information held by tax authorities and other agencies

635. It was not clear from the discussions with the authorities if trusts were subject to tax in Nigeria. However, there is a remarkable process of information sharing between CAC, FIRS, and law enforcement agencies.

Information held by private companies or individuals

636. Where such information are held by private persons or corporate bodies, law enforcement can rely on production orders issued by the court to compel the person or company to produce requested information.

Additional Element:

637. Information regarding data and access to information on beneficial owners are available once registered with CAC and the land registry.

5.2.2 Recommendations and Comments

638. With respect to legal arrangements such as non-profit organisations and trustees, the legal mechanism for obtaining information on beneficial owners and control can be improved to address concerns related to information about beneficial owners that are not named in the forms filed at CAC.

639. BOs and legal arrangements would require a certificate from CAC to be able to open a bank account, thus increasing the chances that 90% of trusts in Nigeria would most likely register with CAC and the land registries located in each state of the federation.

640. The Solicitor General noted that there was need to strengthen existing legislation in terms of express trusts. He noted that since CAMA was enacted in 1990, it is only necessary that it should be reviewed to meet current needs. The Solicitor General and the Registrar General CAC indicated that it is working on a guideline for the registration of Trustees and companies limited by guarantee. The authorities are advised to draft a separate and comprehensive trust law to clear any existing ambiguities.

641. CAC is drafting an amendment to CAMA which would include additional penalties, and monitoring of non-for profit organizations and Associations by relevant agencies. The Ministry of Justice is also planning to draft a comprehensive trust law to address the various gaps noticed in the registration of BOs and trusts. The AG's office could not provide information on how many LTD/GTE registrations it has rejected or the reasons for rejecting them.

5.2.3 Compliance with Recommendation 34

Rec.	Rating	Summary of Factors Underlying Rating
R.34	**PC**	• Nigeria's legal mechanism for registration of legal arrangements and trustees is weak. • Nigeria does not have a comprehensive trust law, thus inhibiting the level of information available in respect of trusts. • Information regarding BOs is not always available in a timely and accurate manner. • There are no guidelines regarding the management of trusts and beneficial owners.

5.3 Non Profit Organisations (SR VIII)

5.3.1 Description and Analysis

Overview of the sector

642. The Corporate Affairs Commission under the CAMA, 1990 has the responsibility to register Non-Profit Organizations (NPOs). However, where such a NPO is registered as LTD/GTE, the Ministry of Justice will also be involved in verifying the object of the company/NPO. As at 2007, it is estimated that 30,000 NPOs – religious based organizations and charity organizations have been registered by CAC.

Registration requirements

643. Registration requirements of LTD/GTE and Incorporated Trustees amplified under R.34 above is applicable to NPOs.

Outreach to the sector

645. At the moment, CAC has not conducted NPO specific outreach but has conducted a general training and public awareness events for all users of CAC services. NFIU have conducted one outreach program with NPOs and is planning to conduct additional outreach programmes covering the length and breathe of Nigeria.

Information on objectives ownership, and control and administration

646. NPOs in Nigeria are owned in the first instance by those who append their names on the forms submitted at CAC. However, they maybe other beneficial owners, who may not want their names to appear on the registration document and who may have substantial interest in the NPO, including chairing the board meetings and determining how the NPO would be managed. Since most NPOs and charitable organizations rely on donations from internal or external sources, they remain vulnerable to money laundering and terrorist financing.

647. There is no framework for monitoring the source of funding, accounting or management of funds or resources available to NPOs in Nigeria. There is no central authority for supervising NPOs, religious and charitable organizations. Once registered, they are not required to report back to CAC. They are only required to provide information regarding any change that may have occurred since its registration.

648. Nigerian FIU informed the assessors that it has commenced the monitoring of NPOs and other religious organizations. It has obtained access to CAC's database and currently has a list of 15,439 NPOs that it is profiling in different parts of the country with a view to determining source of funding, objectives and ownership. This process is

still at early stage and therefore the assessors could not obtain information relating to the outcome of this initiative. SCUML also has access to the CAC data base and are in the process of identifying NGOs and religious organizations that involved in money laundering or terrorist financing. It plans to register the NGOs for the purpose of enhancing its onsite visits. However, they would be relying on CAC for this information.

Transaction and accounting records

649. There is no authority that is empowered to check the transactions or accounting records of NPOs. There is no requirement for NPOs to maintain records of transactions whether national or international. Therefore, it would not be easy to access records of transactions in the absence of a clear guideline requiring such information to be preserved for five years.

Powers to investigate and sanction

650. There are no measures in place to sanction violations of abuse of office by NPO officials. However, the powers of investigation applicable to CAC while investigating companies would be applicable here. Law enforcement agencies can rely on the court to compel production of any information held by NPOs required for investigation of AML/CFT related cases. With regards to terrorist financing, the DSS have exercised the power to seize assets of a NPO suspected of involvement with a listed terrorist group.

Domestic and international cooperation

651. CAC can provide information about registered Nigerian NPOs. However, this information may not be adequate as CAC does not supervise NPOs after registration. There is no mechanism to request the NPOs to preserve financial records or transactions with local and international organizations. There is currently no effective measure in place to ensure that NPO information would be available for international cooperation. No training has been provided to law enforcement agencies to ensure that they would be capable to effectively determine if NPOs are being used as a front for international terrorist groups or are engaged in terrorist activities.

5.3.2 Recommendations and comments

652. As observed above, the registration process for NPOs are adequate, however, there is need for more supervision and monitoring. CAC is not capable of supervising NPOs as there is no provision in the CAMA requiring CAC or any other agency to do so. While it may not be good to frustrate organizations providing charities, their services must be balanced against public interest and security. As such, a supervisory authority like the UK Charity Commission is recommended. CAC should continue with the registration, and the NFIU should continue with its task of analyzing source of funding without muzzling freedom of association enshrined in the Constitution. SCUML should develop a more strategic program to enhance interaction with NPOs for the purpose of fulfilling their AML/CFT obligations. The proposed review of CAMA should take into consideration the need for enhanced supervision of NPOs and the requirement for

preservation of records related to management of the NPOs and local and financial transactions.

5.3.3 Compliance with Special Recommendation VIII

Rec.	Rating	Summary of Factors Underlying Rating
SR.VIII	**NC**	• Few outreach programmes have been conducted to educate NPOs and religious organizations about threats from launderers and terrorists, thus they remain largely vulnerable. • Information on ownership, management structure and financial records are limited and may be different from what is filed at CAC unless they are compelled by the court to provide further information on ownership. • Since there is no monitoring, reporting or accounting mechanism in place, it is difficult to determine who has the controlling power over finance and administration of NPOs in Nigeria • Transaction and accounting records are not available to anybody except the NPOs themselves. They are accountable to themselves and this can be abused by some of them who rely on donations from funding sources that may be illicit. • Court orders would be required to compel NPOs to provide information to law enforcement agencies. • Information available to the public and for international cooperation is limited as the NPO determines what information to share with other people nationally or internationally. At most, they are only answerable to those who provide fund to them.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National co-operation and co-ordination (R31 & 32)

6.1.1 Description and Analysis

653. Policy Makers, LEAs, and Supervisors maintain working relationship through the EFCC Board. Members of the board are drawn from relevant law enforcement agencies such as CBN, SEC, NAICOM, NIA, DSS, the Police, NDLEA, EFCC, NFIU, NCS and ICPC. Section 6 of the EFCC Act confers authority on the EFCC to act as the coordinating agency for anti-money laundering matters in the Nigeria.

Policy development fora

654. The EFCC, CBN, and the NFIU have been leading the process of developing anti-money laundering policies for the country. The authorities stated that there is an inter-agency steering committee chaired by EFCC, which was set up to formulate policies related to anti-money laundering but which is adhoc in nature and do not meet often.. The assessors observed that while there is an inter-agency committee in place, coordination of various aspects of LEA work is not effectively managed by EFCC as stipulated in the EFCC Act. For the purpose of mutual legal assistance and extradition, coordination between the AG's office and the other LEAs is weak.

Co-operative groups/Specialized AML subject matter groups

655. There is no specialized AML subject matter group such as asset forfeiture specialists, or financial crime investigators network in the country.

NFIU & law enforcement agencies and other national institutions

656. The NFIU works in concert with the EFCC in the development of domestic cooperation mechanisms. It has requested other law enforcement and financial supervisory authorities to assign an official to work in the NFIU for a period of one year, which may be renewed for additional year in order to establish a working relationship that enhances exchange of information. This initiative has already been implemented. Information from the NFIU suggests that this initiative has assisted it in accessing information promptly from other agencies.

Central Bank of Nigeria

657. The Central Bank, as the key financial regulatory authority for the country meets with other regulatory agencies, bankers' committee and the NFIU and EFCC from time to time in order to review existing policies and determine if there is need to issue further

guidance. In this regard, information sharing on money laundering issues within the domestic financial regulatory agencies is strong.

658. The formal mechanism in place in the exchange of information within the financial sector is the Financial Management Regulatory Committee, chaired by CBN and the Bankers Committee consisting of all the chief executives of banking institutions in the country. In addition, The CBN has the legal authority under the BOFI Act, the CBN Act, EFCC Act, and the MLP Act to issue guidelines and enforce same across FIs and OFIs. The CBN Supervision Department conducts joint investigation of FIs and OFIs with the NFIU. The CBN relies on the EFCC enforcement powers to enforce financial crimes in the financial sector.

Recommendation 32 (applying R.32.1)

659. There has not been any formal adoption or review of the AML/CFT strategy developed by the inter-agency committee. It has not been made public and therefore does not provide guidance as to the roles and responsibilities of each agency. There is need for review of the current strategy and domestic coordinating mechanism in order to improve AML/CFT related information, statistics and dissemination.

Additional Elements:

560. There is a basic cooperation framework in place at different levels in Nigeria. However, lack of coordination of the different efforts and initiatives undertaken by all the stakeholders from the financial, legal and law enforcement agencies have negatively impacted on the ability of Nigeria to achieve a significant success in its AML/CFT national strategy.

6.1.2 Recommendations and comments

561. Domestic cooperation is weak despite the provision of the EFCC Act that makes the EFCC the coordinating agency for AML/CFT matters. EFCC as the coordinating agency needs to play a more pro-active role by ensuring that the inter-agency committee is institutionalized. The AML strategy should be adopted by the government and published. The authorities should clearly assign roles and responsibilities related to investigation and prosecution of TF to relevant agencies.

6.1.3 Compliance with Recommendation 31

Rec.	Rating	Summary of Factors Underlying Rating
R.31	**PC**	• While there is a framework in place for cooperation, the committee does not meet regularly. • The FIs and OFIs committees seem to be working well but the LEAs lack considerable cooperation. • The LEAs and the FIs lack the synergy required to combat ML and TF effectively

		• The EFCC has not institutionalized the inter-agency committee to enable it meet more frequently to develop policies and issue guidelines as the need arises. • AML/FT intelligence is not widely shared across relevant law enforcement agencies • EFCC reportedly is not often willing to share information on intelligence when requested to do so.

6.2 The Convention and the UN Special Resolutions (R.35 and SR.1)

6.2.1 Description and Analysis

Recommendation 35 and Special Recommendation 1

562. United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), 1988
United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000
International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999

Nigeria ratified the Conventions on the following dates:

- 1988 Vienna Convention on 15th December 1989
- 2000 Palermo Convention on 29th March 2001
- 1999 CFT on 28th April, 2003.

563. These Conventions are being implemented by the enactment of the following legislation:

- The National Drug Law Enforcement Agency Act 1989 Cap 253 LFN 1990;
- The Money Laundering (Prohibition) Act, 2004 ; and
- The Economic and Financial Crimes Commission (Establishment) Act, 2004

564. Nigeria has fully implemented the 1988 Vienna Convention provisions in Article 3 (on offences and sanctions related to narcotics and psychotropic substances); Article 4 (on establishing jurisdiction over offences related to narcotics and psychotropic substances); Article 5 that deals with confiscation of instrumentalities used in or intended for use in any manner in offences related to narcotics; Articles 6 and 7 (on extradition and mutual legal assistance). These Articles have been implemented pursuant to MLP Act, the NDLEA Act, and the Extradition Act.

565. There are provisions for the confiscation of instrumentalities of crime, provisions for the transfer of proceedings, cooperation and training, international cooperation and

assistance for transit states, commercial carriers, illicit traffic by sea, and use of mail for illicit purposes.

566. Nigeria has implemented the Palermo Convention provisions in Articles 6, 10, 11, 13-16 and 18 (on criminalization of the laundering of proceeds of crime; liability of legal persons; prosecution, adjudication and sanctions for money laundering; providing international cooperation for purposes of confiscation; establishing jurisdiction over money laundering offences; extradition and mutual legal assistance). These provisions have been either fully or partially implemented in the MLP, EFCC, NAPTIP, NDLEA Extradition Acts, and the Criminal Procedure Code.

567. Nigeria has also implemented the following Palermo Conventions provisions: Article 5 (on criminalization of participation in an organized criminal group); Article 7 (on establishing the FIU and introducing measures to detect and monitor the movement of cash across borders); Article 12 (on confiscation and seizure of instrumentalities of crime); Article 20 (on use of special investigative techniques or controlled delivery); Article 24-27 (on protection of witnesses and enhancing law enforcement cooperation); and Article 31 (on establishing and promoting best practices to deter transnational organized crime).

Special Recommendation 1

CFT Convention

568. The Assessors sighted the instrument of ratification of the UN Convention for the Suppression of the Financing of Terrorism 1999 (FT Convention). Section 15 of the EFCC Act seeks to criminalize terrorist financing in Nigeria but does not adequately criminalize terrorist acts and terrorist organizations as required by the FT Convention, the UN Security Council Resolutions and FATF Special Recommendations. Nigeria has only ratified 7 out of the 13 UN Terrorist Conventions.

569. The Central Bank had only recently issued a circular to the banks to forward suspicious transactions relating to TF to the NFIU without providing further guideline as to how to detect terrorist funds and the process for seizing, freezing, and confiscation. This circulars, even though binding on the banks are not considered a legal document or other enforceable means for the purpose of the implementation of FATF Recommendations.

570. There is also an absence of a clearly defined and uniform process for implementing UN Security Council Resolutions (UNSC) 1276 and 1373. While the Central Bank reported that it receives the list of persons whose bank accounts and assets are to be frozen from the United States Embassy in Nigeria and then circulates to the banks and other financial institutions, the DSS reported that it receives the list from the Ministry of Foreign Affairs. Again while the EFCC indicated that terrorist financing

matters are handled by the NFIU and CBN, the NFIU also stated that they are handled by either DSS or EFCC.

571. The existing legal framework does not define such key concepts as "freezing", "seizure", "confiscated" and "funds" as required under the interpretive Note to Special Recommendation III. Clearly, it is not only the appropriate law that is not in place, but also an effective mechanism for implementing UNSC Resolutions.

572. . The EFCC Act does not cover "joint ownership", ownership" or "control of funds" or "terrorist organizations". To this extent, the mechanism for extending the freezing actions to those categories under SR.III.4 is too narrow to achieve the desired objective.

Procedure for Freezing Assets under S/Res.1267

573. There are no specific laws and procedures in place to guide the freezing of terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee. The authorities rely on the limited provisions in the EFCC Act which is essentially targeted at money laundering and not terrorist financing. Thus, there is no mechanism that specifies the period within which the freezing should take place to avoid delay. The lack of adequate legal framework has hampered effective implementation of UNSC Resolutions. The authorities stated that only one freezing action has been implemented under UNSC Resolution 1267. This freezing action has not been challenged in the court.

Procedure for Freezing Assets under UNSC Resolution 1373

574. Although it is recognized that UN Security Council Resolutions are automatically binding, yet there is no comprehensive mechanism in place to enforce such Resolutions. Some of the provisions in the draft TF Bill in the National Assembly will in future provide the legal basis for its implementation.

Freezing Actions Taken by Other Countries

575. Section 6 (d) of the EFCC Act empowers the EFCC to seize proceeds of terrorist acts and not terrorist financing. Under the Mutual Legal Assistance Agreements executed between Nigeria and the USA in 1989, Nigeria may give effect to freezing mechanisms initiated in the USA. The scope of this power is not broad enough to cover all U.N. member countries. Additionally, there is no regulation and procedure in place to give prompt determination to such foreign actions, particularly when it relates to terrorist financing.

De-listing Requests and Unfreezing Funds of De-listed Persons

576. There are no publicly known procedures for de-listing and unfreezing of funds.

Unfreezing Procedures of Funds of Persons Affected by Freezing Mechanism

577. No such procedures exist.

Access to frozen funds for expenses and other purposes

578. No such procedures exist.

Review of Freezing Decision

579. No such procedures exist, but the constitutional right to property coupled with the court's power to review executive actions may provide an alternative mechanism for any person to apply to the court where that person's funds or other assets have been wrongly seized or frozen. The power of judicial review can and do prevail over freezing order. However, there are concerns that the suspects may be scared to ask for review when nobody has communicated the reason for the freezing order to the affected person or organization.

Protection of third party rights

580. In the absence of the Terrorist Financing legislation, there is no provision that protects the rights of bona fide third parties in terms of the standards provided in Article 8 of the Terrorist Financing Convention.

Monitoring compliance with obligations

581. There is no effective monitoring mechanism in place.

Additional elements

582. .Nigeria has signed various bilateral and multilateral AML instruments such as:

- ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- OAU Convention on the Prevention and Combating of Terrorism, 1999;
- the Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers;

- United Nations Convention Against Corruption (UNCAC)

6.2.2 Recommendations and comments

583. Nigeria has ratified 7 of the 13 UN Terrorism Conventions including the FT Convention, which has not been fully implemented according to the FATF SR I and the requirements of the Convention. Nigeria needs to move quickly to finalize the a comprehensive Terrorism Bill, which would include all the elements of the UN FT Convention, the UN Security Council Resolutions 1267 and 1373 and the FATF Recommendations.

584. It is also important to issue clear guidance or regulations regarding the measures required for the effective implementation of the Resolutions. It is hoped that the international legal framework on CFT would be fully implemented by Nigeria soon which would enhance its capability to effectively tackle terrorist financing and be able to provide prompt response to international cooperation requests.

6.2.3 Compliance with Recommendation 35 and Special Recommendation 1

Rec.	Rating	Summary of Factors Underlying Rating
R.35	**LC**	• The FT Convention has not been fully implemented as it requires a comprehensive legislation, regulation or guidance to comply with the FT Convention and FATF Special Recommendations on terrorist financing.
SR. 1	**NC**	• Section 15 of the EFCC Act which seeks to criminalize terrorist financing in Nigeria is not comprehensive and does not meet the requirements of the 1999 FT Convention, the UN Resolutions and FATF SR 1. • There is clear guidance regarding the implementation of the UN S/C Res 1267 and 1373. • A comprehensive terrorist financing bill is yet to be passed into law.

6.3 Mutual Legal Assistance (R.36-38, SR V, R. 32)

6.3.1 *Description and Analysis*

Recommendation 36 and SR V

Legislation

585. Section 2 of Cap 235 LFN 1990 on Mutual Legal Assistance with Commonwealth countries permits the provision of widest possible range of mutual assistance to Commonwealth Member States. In the West Africa sub-Region, Nigeria has ratified the ECOWAS Protocol on Mutual Legal Assistance, which is applicable to Member States in the region. For non-Commonwealth and non-ECOWAS Countries, the Constitution permits the negotiation of Multilateral and Bilateral Agreements on Mutual Legal Assistance. Nigeria currently has such bilateral agreements with some countries including, Russia, United States of America, and Iran. These mutual legal assistance arrangements are applicable to AML cooperation requests.

586. Nigeria does not have a comprehensive legislation on international cooperation. Mutual legal assistance related legislation has to be distilled from multiple legislation and various multilateral and bilateral agreements. The Attorney –General and Minister for Justice is responsible for the negotiation and implementation of mutual legal assistance treaties.

MLA channels that can be used by Nigerian authorities

587. The Nigeria authorities, listed situations where they can provide mutual legal assistances wide range of MLA tools which are available to law enforcement agencies through the office of the AG including,

- Serving summons of judicial document requiring a person to appear before a judicial authority in the requesting country as a witness or defendant in criminal proceedings;
- Obtaining sworn evidence or other certified documents, including banking documentation for use in criminal proceedings and investigation;
- Authenticating and certifying evidence for use in the requesting country where that evidence has already being obtained by the Nigerian police for their own purpose;
- Exercise of search and seizure powers where evidence is required for use in criminal proceedings or investigations; (including financial records from financial institutions or other natural or legal persons);
- Permitting requests for video and telephone conferencing of evidence given by witnesses and suspects; and
- Restraining (freezing) and confiscation of proceeds of crime;

588. The various MLA agreements which Nigeria has signed specify the procedure for the service of overseas processes and the obtaining of evidence in Nigeria.

Entry, Search and Seizure

589. When conducting investigations of money laundering and underlying predicate offences, the competent authorities have the power to enter into any premises to conduct search and possibly seize and obtain evidence relevant to the prosecution of a suspect. This includes powers to use compulsory measures to obtain financial records from FIs and other institutions that may be in custody of such records.

590. The court may issue a warrant to the enforcement agency to enter, and search premises, where the crime under investigation is a crime under the law of the requesting country and under Nigerian law.

Conditions & Restrictions on MLAs

591. Fiscal matters are not grounds for refusal of MLA. The MLP Act, section 12 (4) does not permit secrecy or confidentiality but the Official Secrecy Act, 1962 is still applicable to government business. The authorities advised that the Secrecy Act may be a basis for denial of MLA where the request will affect national security.

592. Dual criminality is required for search warrants and may affect requests for freezing orders and investigation where the offence is not criminalized under Nigerian law. Section 36 (8) of the Nigerian Constitution provides that no person shall be held guilty of a criminal offence that did not constitute an offence at the time it was committed. Additionally Section 36 (12) goes further to state that "subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law. The Constitution defines a written law as any: *"Act of National Assembly or of the law of State, any subsidiary legislation or instrument under the provision of a law*[13]*"*.

593. Where the MLA request impinges on double jeopardy (ne bis in idem), it will be rejected as this is contrary to the fundamental human rights provision under Section 36 (9) of Nigerian Constitution. Double jeopardy will occur where a subject of a request has been convicted or acquitted in Nigeria or third country for an offence arising from the conduct mentioned in the request.

594. There are no prohibitions to information or records in the custody of FIs and DNFPBs. The MLP Act prohibits banking secrecy. However, legal professional privileges may apply in cases where the subject matter does not have to do with financial transactions as required by the MLP Act.

Processes for execution of MLA requests

[13] *Section 36 (12), 1999 Nigeria Constitution.*

595. The powers of competent authorities as explained under R.28 are also available for use in response to requests for Mutual Legal Assistance.

Timeliness of responses to MLA requests

596. There is no specific requirement for MLA to be executed within a specified time. The authorities informed the Assessors that in the absence of any legislation in this regard, they are very flexible and it is possible to turn over requested information in a day if the information is available. The authorities would take any step to respond within the specified time in the request, unless where the court process is unduly delayed.

597. There is no process in place for monitoring Nigeria's performance or average time required for responding to MLA. It would likely vary from case to case and would depend on the availability of the information and level of expertise required to generate the requested information. The MOJ have the international law department that is in charge of responding to MLA requests but they informed the Assessors that they lack adequate staffing. They indicated that they require training on money laundering and terrorist financing to enable them respond more effectively to MLA requests.

Mutual Legal Assistance Treaties

598. Without a comprehensive legislation on MLA, Nigeria depends on a wide-range of bilateral and multilateral treaties and agreements to execute international cooperation requests on criminal matters. It has entered into such agreements with Commonwealth countries, ECOWAS/GIABA Member States, Russia, United States and Iran

Multilateral agreements

599. This can be found in a range of international and regional conventions and protocols that Nigeria is party to. They include,

- United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), 1988;
- United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000;
- International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999;
- Cap 235 LFN 1990 on Mutual Legal Assistance with Commonwealth Member States;
- ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region;
- ECOWAS Protocol on Mutual Legal Assistance;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- OAU Convention on the Prevention and Combating of Terrorism, 1999;

- the Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers

There is no MLA policy, guidelines or procedure in place in Nigeria

Avoiding conflict of jurisdiction

600. Where there is conflict of interest regarding an already ongoing investigation on the request of another country, a mutual agreement will be negotiated by Nigeria and the requesting country. Such a negotiation may require postponement of the request until such a time it is mutually convenient to respond to the request or when it will not affect Nigeria's internal investigation or prosecution of the case.

Additional elements

601. Powers for compulsory measures (e.g. compelling production, search and seizure of documents from financial institutions) are available in Nigeria. The submission of requests for MLAT, which involves anything other than exchange of information or submission of documents, must be submitted to the AG's office.

Recommendation 37 (dual criminality relating to mutual legal assistance) and SR V

602. As indicated above, Nigeria may grant mutual legal assistance requests in respect of all offences within the scope of any international convention to which Nigeria is a party, irrespective of how it is categorized in any other country[14].

603. Requests for mutual legal assistance can be granted once the offence is criminalized under Nigerian law[15] and the laws of the requesting country irrespective of the manner of categorization.

604. However, the principle of dual criminality will prevent competent authorities from granting MLA in money laundering offences once Nigeria has not criminalized the underlying predicate offence. As stated above, Nigeria law requires an offence to be criminalized under an "Act" of the National Assembly, law of a State and subsidiary legislation within the period when the crime was committed in order for an alleged suspect to be punished for such an offence. There are conflicting opinions about the position of the Constitution and the international legal obligations of Nigeria under the various international treaties, and protocols to which Nigeria is a party to. Under the FATF Recommendation 37, dual criminality is permissible but should be waived under certain circumstances.

[14] Section 42 (2) of the 1999 Constitution.

[15] Section 36 (8) & (12) of the 1999 Constitution

605. R. 37.1 requires mutual legal assistance to be rendered to the widest extent possible in the absence of dual criminality, particularly for less intrusive and non-compulsory measures. For matters on extradition and MLAs, where dual criminality is required, countries are urged to provide assistance under existing treaties where such offences have been criminalized by both countries. It was not clear from the discussions with the Nigerian authorities if MLA would be granted for less intrusive and non-compulsory measures given the current Constitutional provision. This is because there is no comprehensive MLA legislation.

606. The same principle is applicable to requests for MLA in respect of financing of terrorism, terrorist organizations and terrorists. In the absence of a comprehensive TF legislation, MLA requests are likely not to be granted in an effective manner.

Recommendation 38 and SR V

607. Under section 24 of the EFCC Act, 2004, as well as section 22 of the NDLEA Act, 1989, the EFCC and the NDLEA are empowered to confiscate proceeds of money laundering offence committed either in Nigeria or in a foreign country. Furthermore, Section 20(c) of the EFCC Act, 2004 and Section 18(c) of the NDLEA Act, 1989 empower the authorities to seize instrumentalities used in or intended for use in the commission of any money laundering or financing of terrorism or other predicate offences.

608. The EFCC and the NDLEA Acts permits the agencies to have bilateral agreements related to coordinating seizures, freezing and confiscation actions/requests with their counterparts in other countries.

609. Section 15 of the EFCC Act, 2004 partially provides for criminalization financing of terrorism in Nigeria. It is based on the UN International Convention for the Suppression of Terrorist Financing. Under the EFCC Act, mutual legal assistance requests can be provided for the investigation and prosecution, freezing, and confiscation of proceeds of any criminal act or illegal activities, including money laundering. However, mutual legal assistance on terrorist financing requests is limited because of the weakness in the existing legislation.

610. There is lack of coordination with regards to the sending and receiving of mutual legal assistance and extradition matters in relation to freezing, and confiscation of laundered properties, and instrumentalities used for laundering and terrorism since the various agencies involved in AML/TF often respond to international requests.

611. In practice, the Attorney –General is the central authority but at the time of onsite visit, the AG's office could not provide statistics on MLA requests, neither could other agencies such as EFCC, NDLEA, Police, and DSS.

Consideration of asset forfeiture and fund and asset sharing

612. The Nigerian law does not permit the establishment of asset forfeiture fund. The MLP Act does not provide the legislative framework for sharing of confiscated assets; however, the Attorney General may negotiate assets sharing formula with other countries where confiscation is directly or indirectly the result of co-coordinated law enforcement activities.

Additional elements

613. Nigerian laws may permit the enforcement of foreign non-criminal confiscation orders even though civil based forfeiture is not yet recognized under existing laws.

Recommendation 32 (statistics)

MLA statistics: total requests that have passes through the Ministry of Justice and other agencies

614. The authorities did not provide requested statics in relation to mutual legal assistance requests that have been granted or rejected on AML/CFT cases. Thus the Assessment team was unable to determine if the implementation of the existing laws and mechanisms are effective. It was also not possible to determine the time-frame for responding to MLA requests.

6.3.2 Recommendations and comments

615. Nigeria does not have a comprehensive legislation on MLA with regard to money laundering. There are no adequate measures in place to provide assistance related to terrorist financing. The execution of MLA requests requires reference to various bilateral and multilateral agreements and the negotiation of agreements as the need arises. This may inhibit prompt response to MLA requests.

616. Nigerian criminal legal principle and the Constitution require dual criminality before a request for MLA can be granted. The same principles are applicable to application of double jeopardy. However, there is nothing to indicate that MLA process is unduly restrictive where the offence has been criminalized by Nigeria and the requesting countries.

617. There is no guideline or policy regarding MLA. It is also difficult to determine how long it takes to execute requests. Statistics related to requests and responses to other countries are hard to come by. The MLA process is not coordinated and other agencies have often bypassed the central authority –AG/MOJ – to request and respond to MLAs.

618. The authorities are on MLA. The AG's office should develop a policy or guidance for all the enforcement agencies and ensure proper coordination and maintenance of data

related to money laundering, terrorist financing, asset forfeiture and confiscation mutual legal assistance requests.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.36	**PC**	• There is no comprehensive MLA legislation • Lack of comprehensive TF legislation does not permit effective international cooperation for terrorist financing cases. Due to lack of comprehensive legislation, guidance and policy on MLA, requests may be delayed. Lack of statistics on MLA requests Lack of effective implementation of international cooperation mechanisms available in the country.
R.37	**PC**	• Nigeria's Constitution and criminal legal principles does not permit granting of MLA request in all cases where dual criminality is required. • In the absence of a comprehensive legislation and a clear guideline on MLA, it is difficult to determine if MLA can be granted despite the dual criminality provision for less intrusive and no-compulsory measures
R.38	**PC**	• The Nigerian legislation on freezing, seizure and confiscation is applicable to the requests for international cooperation. • This power are limited with regard to SR.V because there is no legislation or guideline specifying that international cooperation may be granted to TF related freezing and confiscation requests. • The existing law is not clear on time limits for execution of MLA and extradition requests when there is need to freeze assets. • There is no legal requirement to share assets which are proceeds of joint confiscation actions. • The law does not permit the establishment of asset recovery funds

SR. V	**NC**	• In the absence of comprehensive legislation and a clear guidance on international cooperation requests on TF cases, the authorities cannot provide MLA as required by SR V

6.4 Extradition (R.39, 37 & SR.V)

6.4.1 *Description and Analysis*

Recommendation 39 and Special Recommendation V

619. Under the Extradition Act Cap 125 LFN 1990, AML/CFT offences are extraditable offences. Section 35 of the Nigerian Constitution provides for the protection of right to liberty of every Nigerian citizen. However, Section 35 (1) (f) of the Nigerian Constitution states that this right may be derogated from in accordance with a procedure permitted under the law for the purpose of effecting extradition or other lawful removal from Nigeria. Section 41(2) of the Constitution permits the granting of extradition in situations where the person has committed a criminal offence and on the basis of reciprocity. The Federal High Court – a court of superior record is empowered under Section 251 (1) (f) to adjudicate matters related to extradition of Nigerian citizens. The assignment of extradition cases to a superior court of record is aimed at ensuring expeditious disposition of requests on extradition.

The process for granting extradition

620. Section 1 (1) of the Extradition Act provides that "*where a treaty or other agreement has been made by Nigeria with any other country for the surrender by each country to the other, of persons wanted for prosecution or punishment, the National Council may by order published in the Federal Gazette apply this Act to that country"*

621. It further states that *"an order under this section shall embody the terms of the extradition agreement, and the competent authorities may apply this law to the requesting country subject to such conditions, exceptions, and qualification as may be specified in the order issued by the national council".*

622. The Attorney General (AG) is responsible for the processing of extradition requests in Nigeria. A request for extradition of a fugitive or any person accused of any crime shall be made in writing to the AG by a diplomatic representative or consular officer of the requesting country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in the requesting country.

623. Once the request is made, the AG may present the request to the competent court[16] in order for the court to deal with the request in accordance with the provisions of the Act.

[16] the competent court was previously the magistrate court, however, the 1999 Constitution have shifted the authority to hear extradition matters to the federal high court

624. The AG may not present the request to the court if he is satisfied that the request falls in the "exclusion or restrictive clauses" under section 3 (1) to (7) of the Extradition Act. Exclusion clauses may arise in the following circumstances:

- If it is a political offence
- Request is made to punish the person on the basis of religion, race, nationality or political opinion or the request was not made in good faith and will not be justified in the interest of justice;
- If the nature of the offence is trivial;
- The passage of time since the commission of the offence is long;
- If granting the request is unjustified, oppressive and too severe; and
- If the person has already being convicted of the same offence or charged with the same offence in Nigeria or already serving prison term in Nigeria

Dual criminality and extradition

625. By virtue of Section 6(4) of Cap 235 Act, Nigeria grants extradition requests in respect of all offences within the scope of any international convention to which Nigeria is a party, irrespective of how it is categorized in any other country. However, extradition can only be granted once the offence is known to Nigerian law and the laws of the requesting country[17]. The Assessors were not able to determine from the responses from Nigerian authorities if dual criminality would be waived for requests that are less intrusive and for non compulsory measures

Restrictions on Extradition

626. Nigeria extradites her own nationals and in recent times, some Nigerians have been extradited to the United States. Each case will be determined by the nature of extradition agreement in force between Nigeria and the requesting country. However, a Nigerian would not be extradited if the Attorney General or the court handling the matter is satisfied that he has already being convicted for the offence which he is sought for, or has been acquitted by a court of law.

627. Additionally, if the person is already being prosecuted in Nigeria for the same offence, or for another offence or is already serving a prison term in respect of any such offence in Nigeria, he/she shall not be surrendered to any country unless the AG is satisfied that there is a special provision in that country to ensure that the person is not detained or tried in that country for any offence committed before his surrender other than the extradition offence which may be proved by the facts in the request.

628. Where a request is made by more than one country whether for the same offence or different offences, the AG shall determine which request is to be accorded priority, and may refuse other request or requests. The AG shall have regard to the following circumstances in taking a decision:

[17] Sections 36 (8) & (12) of the 1999 Constitution.

- The relative seriousness of the offences, if different;
- The dates on which the requests were made; and
- The nationality of the person and place where he is ordinarily resident

629. Once a judge is satisfied that the evidence before him justifies the arrest, he would issue a warrant if the offence was committed in Nigeria or the person would be convicted if the offence had been committed in Nigeria. A warrant issued under this law may be executed in any part of Nigeria. Once, arrested, the person must be brought before the judges. The judge would determine the case based on further evidence before him and may direct the person to be surrendered to the requesting country or discharged.

Efficiency of Extradition Process

630. Under the 1999 Constitution, extradition is now under the jurisdiction of the Federal High Court - court of superior record, and therefore, handled expeditiously as opposed to pre-1999 when it was under the jurisdiction of magistrate court, which is a court of inferior record. A request for extradition submitted to authorities in Nigeria must be issued through the judgment of a competent court in the requesting country. In any proceedings, any of the following documents if fully authenticated shall be received in evidence without further proof, namely;

- Warrant issued in a country other than Nigeria;
- Any disposition or statement on oath or affirmation taken in such country or copy of it; and
- Any certificate of conviction issued in another country.
- All such documents must be duly authenticated in the manner provided by law –when it is signed by a judge or magistrate from the other country.
- Judicial notice can also be taken of the official seal of ministers of countries other than Nigeria.

631. There is no indication as to how long it would take to obtain the court order in Nigeria order to be able to respond to the extradition request. Nigeria has a clear procedure in extradition matters which include specification of guidance/forms and the clear delineation of responsibility of each competent authority in the law. This procedure is expected to enhance efficiency of the process.

Recommendation 37 and SR. V

632. As discussed earlier, requests for extradition in terrorist financing cases would also be inhibited by the principle of dual criminality. The competent authorities may not grant such requests when Nigeria has not criminalized the underlying predicate offence of terrorism and terrorist financing.

Statistics

633. The authorities did not provide requested statistics on extradition cases completed or ongoing.

6.4.2 Recommendations and comments

634. Nigeria has comprehensive extradition legislation. However, the legislation is restrictive with regard to dual criminality principles which may inhibit efficient execution of international cooperation requests. There is no time limit regarding the length of time required to respond to requests. In the absence of relevant statistics, it was difficult to determine the effectiveness of existing legislation.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.37	**PC**	• The requirement for dual criminality under the Nigerian law may restrict efficient execution of extradition requests. • It was not possible to determine if requests would be granted for less intrusive and no-compulsory measures.
R.39	**LC**	• Extradition cannot be applied to terrorist financing offences. •
SR. V	**NC**	• Lack of comprehensive TF legislation inhibits compliance with SR.V as it pertains to extradition requests for terrorists and terrorist organizations and their source of financing.

6.5 Other Forms of International Cooperation (R.40, SR.V & R. 32)

6.5.1 *Description and Analysis*

Recommendation 40 and SR V

635. There are various multilateral and bilateral frameworks for international cooperation in Nigeria. Competent authorities, NDLEA, NFIU, EFCC, NCS, NPF, DSS and NIA are empowered to collaborate with authorities in other countries in carrying out their functions. This cooperation framework is permitted under section 6(j) EFCC Act and Section 3(p) NDLEA Act. Section 15 of the EFCC Act, 2004 does not adequately prohibit financing of terrorism or terrorism in Nigeria.

636. The National Intelligence Agency (NIA) has been pivotal in the establishment of some regional and sub-regional organisations committed to the collation and use of intelligence for continental security. Amongst such initiative are the NEPAD Intelligence and Security Committee (NISCO) established by the Heads of Intelligence Services of Algeria, Ethiopia, South Africa and Nigeria.

637. Similarly, Nigeria's DSS and NIA are members of the Committee of Intelligence and Security Services of Africa (CISSA). CISSA was established by thirty-two African States and has since its establishment been in the vanguard of continued campaign against transnational organised crimes. It seeks to protect the gains of the New Partnership for Africans Development. Nigeria also uses her membership of West Africa Intelligence and Security Committee (WAISEC) to investigate cases of ML/FT. The DSS engages in different forms of international cooperation on terrorism and terrorist financing and is the focal point for the implementation of the AU Plan of Action for the Prevention and Combating of Terrorism in Nigeria.

638. Central Bank of Nigeria, NAICOM, and SEC has authorities to exchange information with counterparts in other jurisdictions. The potential gateways for exchange of information include IOSCO. SEC is on the board of IOSCO. Other mechanisms include the West African Bankers Committee, West African Monetary Union, and the Basel Committee.

FIU to FIU cooperation

639. NFIU is a repository of financial information and intelligence data accessible by foreign FIUs based on the Egmont Group Statement on the Exchange of Information. Under the EFCC Act, the NFIU can obtain information from any other competent authorities or persons, in order to respond to a request from a foreign counterpart FIU.

640. The NFIU has access to various data bases within and outside Nigeria and information derived from its data base is made available to appropriate authorities. Appropriate authorities can also use information available on NFIU data base. The NFIU is a composite of permanent staff and seconded personnel from appropriate agencies like SEC, NPF, NCS, NDLEA, FIRS, CAC NDIC and NIA. Seconded personnel serve as liaison to their agencies as regards access to information. Under Section 4(2) of 235 LFN, requesting countries are required to disclose the purpose of the request and on whose behalf the request is being made. Once this is clarified, NFIU is obliged to respond accordingly.

No of Requests received from Egmont FIUs

The following requests came either through e-mail, courier service or ESW. The countries are as follows:

S/N	FIU/COUNTRY	NO OF REQUEST
1	UIF-Argentina	1
2	FIU-Bahamas	3
3	UAF-Chile	1
4	AMLO-Croatia	1
5	FIU-Germany	1
6	FCU-Jersey islands	1
7	SIC-Lebanon	1
8	FIU-Mauritius	2
9	MOT/BLOM-Netherlands	1
10	UIF-Peru	1
11	UIF-Portugal	4
12	FSFM-Russia	1
13	FIC-South Africa	1
14	MROS-Switzerland	1
15	AMLSCU-United Arab Emirates	1
16	SOCA-United Kingdom	10
17	FinCEN-United States of America	1
18	UNIF-Venezuela	1
TOTAL	**19**	**33**

***Net Inquiry:** (1) Zimbabwe

Cooperation by Law Enforcement Agencies

641. In Nigeria, competent authorities like the EFCC, NFIU, NDLEA, NCS, and the Police exchange information with their foreign counterparts. These are achieved through MOUs, and Bilateral Agreements. They cooperate in criminal investigation and exchange of information through appropriate international or regional organizations such as Interpol, CISSA, WAISEC, and the West African Police Chiefs Committee (WAPCCO). Exchange of information are done upon requests and spontaneously, in some instances using e-mail, and fax.

Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts

642. All law enforcement and supervisory authorities in Nigeria are authorized to conduct enquiries on behalf of their foreign counterparts.

No undue restrictions on exchange of information

643. Exchange of information is not subject to any unduly restrictive conditions. It was been reported recently that the Ministry of Justice through the AG's office have been restricting the exchange of information in some cases involving money laundering in the UK. However, this is not a government policy as the AG wrote a letter to the UK authorities explaining his reason for the refusal of the request from UK and requesting

that the request be resent through the appropriate channel. The Assessors were informed that these concerns would be shortly resolved through diplomatic channels.

644. The authorities advised that there are no restrictions concerning the exchange of information on fiscal related matters.

Regulatory cooperation/secrecy or confidentiality and cooperation

645. The MLP Act prohibits secrecy or confidentiality requirements in the conduct of business by financial institutions or designated non-financial institutions. Therefore this is not a barrier to requests for cooperation by foreign counterparts.

CBN/NAICOM/SEC statistics of MOUs or requests from other jurisdictions -

646. The financial supervisory authorities did not provide statistics on requests granted or MOUs signed with other jurisdictions

Safeguards in use of exchanged information

647. Under Section 9 of Cap 235 LFN, the contents of requests as well as the information and material supplied, are to be kept confidential by the central authority in Nigeria. However, this does not seem to be the case in practice as cooperation requests and letters exchanged between authorities in the recent time have been published in the papers. It is not clear how this information got to the journalists.

Additional Elements

648. The mechanisms are in place to permit the prompt and constructive exchange of information with non-counterparts.

6.5.2 Recommendations and comments

649. Nigerian agencies – law enforcement agencies and financial institutions' regulatory bodies have requisite mechanisms to provide administrative cooperation. However, statistics regarding this cooperation initiatives in the region and globally are hard to come by. The inability of the authorities to provide adequate statistics has impacted on the effectiveness of existing measures. Authorities are advised to maintain comprehensive statistics on international cooperation requests whether granted or refused, so as to be able to monitor the existing international cooperation mechanisms and determine if there is need to improve on them.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.40	**LC**	• Lack of statistics and information on types of cooperation granted.

SR. V	**NC**	• The absence of a comprehensive legislation on TF hampers international cooperation in this regard.

7. OTHER ISSUES

7.1 Resources and Statistics

650. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 & 32 are contained in all the relevant sections of the report. Some are in section 2, parts of sections 3 and 4 and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the rating and the factors underlying the rating.

Rec.	Rating	Summary of Factors Underlying Rating
R.30	**PC**	• The structure of law enforcement agencies in Nigeria allows for operational independence in the investigation of ML/TF and other organized crime. However, the legal framework is often ambiguous with regards to supervisory line of authority • The AG's power over criminal prosecution is too broad. As a political appointee and also the Minister for Justice, there are concerns that this power may be used to hinder effective administration of justice in the country. • With the exception of EFCC, the other agencies are not adequately funded. Resource – human and material resources are limited across all the other enforcement agencies. • Training opportunities are not evenly distributed despite the presence of specialized training units in EFCC and NDLEA. • ICPC is not aware of best practices notes on PEPs and have not developed any risk analysis strategy. • There is a lack of information sharing between the ICPC and the NFIU. • There is no legal requirement defining the maximum length of time that a case may remain open.
SR. 32	**PC**	• Statistics on ML/TF prosecution and investigation, including asset forfeited or confiscated are not centrally coordinated.

		• It is difficult to determine who is responsible for collating data on ML/TF. Though the EFCC Act empowers the EFCC and the NFIU to maintain statistics on money laundering, this is not the case in practice, as each agency involved in the formulation of ML/TF policy maintains separate records. • No statistics were provided by the Police regarding investigations on money laundering and terrorist financing, workforce training, or fiscal year financial statements. • Statistics concerning the total number of money laundering and terrorism and terrorist financing cases under investigation or prosecution in Nigeria are not centralized and not readily available for use.

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The ratings of compliance are made in accordance with FATF Recommendations based on the four levels mentioned in the 2004 Methodology namely, (Compliant-(C), Largely Compliant (LC), Partially Compliant (PC), Non- Compliant (NC), or could in exceptional cases be marked as not applicable (N/A)

Compliant	The Recommendation is fully observed with respect to all essential criteria
Largely Compliant	They are only minor short comings, with a large majority of the essential criteria being met
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria
Non-Compliant	There are major shortcomings, with a large majority of the essential criteria not being met
Not Applicable	A requirement or part of a requirement does not apply , due to the structural, legal or institutional features of a country, e.g. if particular type of financial institution does not exist in that country

Forty Recommendations	**Rating**	**Summary of factors underlying rating**
Legal systems		
1. ML offence	LC	• The reference to predicate offence as constituting "all illegal acts or crime" is too broad and requires further definition in order to make it less ambiguous. • •
2. ML offence– mental element and corporate liability	PC	• The sanctions regimes are not proportionate and dissuasive. • The law on plea bargaining which allows the EFCC to compound any offence by accepting such sum of money as they think fit can significantly undermine the entire anti-money laundering sanctions regime, because in theory and in practice they have the potential of whittling down the deterrent effect of the

		sanctions.
3. Confiscation and provisional measures	PC	• Significant legal gaps exist in the confiscation regime in terms of: • Property of corresponding value and instrumentalities intended for use in TF are not covered and it may be difficult to obtain confiscation orders in relation to those properties. • Lack of definition of important concepts such as freezing, seizure, forfeiture and confiscation as well as inconsistency in the laws relating to freezing of assets makes the regime ambiguous. • Insufficient legal protection for bona fide third parties. • Absence of rules to manage and dispose of confiscated properties. • Absence of comprehensive FT legislation • Weak co-ordination in the AML/CFT regime. • No centralized statistical data on ML and FT investigations, freezing, seizure, forfeiture and confiscation. • Absence of statutory provisions to void or pre-empt actions that render confiscation nugatory.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	NC	• There is no statement in the law (MLP Act 2004) that explicitly prohibits the opening or maintaining of numbered or anonymous accounts. • The requirement by law to conduct CDD is not extended to all of the situations required by the FATF Recommendations, particularly where doubts arise as to previously obtained CDD information for occasional transactions above USD 5,000 that are not cash, when there is a suspicion of terrorist financing, and for

		occasional transactions that are wire transfers. • There is no legal requirement to conduct risk assessment in order to determine the risks posed by existing customers. • The reporting requirement for occasional transactions that are wire transfers is USD 5,000, which exceeds the FATF standard of USD 1,000. • BDCs do not currently take steps to verify the identification information obtained from their customers, which does not comply with CDD requirements in the MLP Act and FATF Recommendations. • There is no clear obligation to identify and take reasonable measures to verify the beneficial owner for all customers, including determining whether the customer is acting on his/her own behalf, understanding the ownership/control structure of the legal entity, and determine the natural persons who exercise ultimate control over the entity. • Paragraph 9 of the KYCM allows for some full exemptions from CDD, rather than merely simplified or reduced due diligence. • The MLP Act and guidance to FIs on beneficial ownership is unclear, particularly in the insurance and capital markets sectors where beneficial ownership information is not consistently collected. • The quality of FIs' regular reviews of their customer accounts is questionable since sufficient guidance to help distinguish among the various levels of risk is lacking. Clear guidance has not been provided to FIs to help them correctly identify and monitor high risk customers. • The assessors were of the view that there is no requirement to conduct ongoing due diligence on the business relationship.
6. Politically exposed persons	NC	• There is no requirement in Nigerian law that relates to PEPs, and no statement that clearly

		defines PEPs according to FATF standards. • There is no clear guidance that states what enhanced CDD measures FIs must take for those customers or beneficial owners who become PEPs subsequent to establishing a business relationship
7. Correspondent banking	NC	• There is no clear definition of correspondent banking either in law or regulation. • The current guidance on correspondent banking does not provide how to determine the suitability of correspondent banks before FIs establish such a relationship. • There is no obligation that requires senior management approval before FIs establish a correspondent relationship. • There is no guidance provided to FIs for monitoring and maintaining a correspondent banking relationship.
8. New technologies & non face-to-face business	NC	• The measures for mitigating risks in technology and for establishing non face-to-face businesses are not fully developed. • The guidance for enhanced CDD and ongoing due diligence procedures for non face-to-face customers is not effectively applied by FIs (particularly the banking and securities sector).
9. Third parties and introducers	PC	• Nigeria does not have a prohibition against the usage of third parties or intermediaries by its FIs for obtaining and verifying customer information. • Insurance companies, securities firms, and BDCs rely upon their agents to obtain and verify CDD information, but do not conduct any verification measures themselves as required in the KYC Manual. • FIs have not demonstrated that proper due diligence is conducted to satisfy themselves that a third party which is a foreign country effectively applies the FATF standards for CDD requirements

10. Record keeping	PC	• • The manner of preservation of information by some FIs does not meet required industry standard. There is concern that some sectors are not meeting record keeping requirements. • The On-site supervision by the competent authorities is inconsistent and covers only a small percentage of the financial sector
11. Unusual transactions	LC	• No special attention are paid to monitoring of unusual transactions
12. DNFBP–R.5, 6, 8-11	NC	• Beyond basic customer identification and record keeping requirements the DNFBP sector appear unclear as to their wider CDD obligations • Limited practice of Casinos performing enhanced due diligence for higher risk customers, nor is there adequate procedures in place for verification of customer's identity • The same deficiencies and comments made previously for action by Nigeria with respect to Recommendations 5,6 to 8 - 11 are also applicable for the DNFBP
13. Suspicious transaction reporting	PC	• Limited STR reporting – lack of knowledge of suspicious transaction by reporting entities • STRs are being substituted for CTRs • Lack of definition of what is "suspicious transactions" • No consistency in the guidelines issued to all reporting institutions.
14. Protection & no tipping-off	PC	• No explicit legal protection of reporting institution
15. Internal controls, compliance & audit	PC	• There is no specific provision indicating that the compliance officer must have timely access to customer identification and other CDD information, transaction records, and other relevant information. • There is no broad requirement to have screening procedures to ensure high standards when hiring all employees.

		• There is no framework to establish the adequacy and appropriateness of the internal policies • Compliance Officer are not independent
16. DNFBP–R.13-15 & 21	NC	• There is no legislation explicitly protecting persons who report in good faith. • There is no provision in the law requiring DNFPBs to observe internal control, appoint compliance officer or develop training programmes • There is no effective supervision of DNFPBs yet in the prevention of ML/TF.
17. Sanctions	PC	• Low number of compliance monitoring carried out in some sectors. • It is also unclear how the regime of administrative and criminal sanction is articulated in practice. • The number of the overall sanctions implemented to date is very low. • The range of available sanctions should be made more comprehensive in order to reflect the FATF requirements. • Applied sanctions are not considered to be effective, proportionate or dissuasive. • No sanctions have been implemented in the capital market sectors
18. Shell banks	NC	• There is no requirement by law that prohibits the establishment or operation of shell banks in Nigeria. • There is no legal requirement for FIs to ensure that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	LC	• A sizeable informal sector not covered in the reporting requirement (large informal exchange bureau - unlicensed by CBN) and DNFBPs

		• Nigeria's reporting threshold for corporate entities is N5 million (equivalent to USD 43,000), which exceeds the FATF threshold of USD 15,000.
20. Other DNFPBs & secure transaction techniques	PC	• Nigeria has not implemented modern secure transaction techniques for use by non-financial businesses and professions
21. Special attention for higher risk countries	NC	• No provision for special attention on countries not applying FATF recommendations • There are no counter measures being applied to countries that do not apply FATF recommendations.
22. Foreign branches & subsidiaries	NC	• No explicit rules for the insurance sector to ensure that foreign branches and subsidiaries apply AML/CFT measures in host countries to the extent possible. • There is no requirement on the part of FIs to inform the home country supervisor about their inability to observe appropriate AML/CFT measures because the host country's laws does not permit its application
23. Regulation, supervision and monitoring	NC	Market Entry • There is a significant number of 'informal' currency exchange providers operating in an open and unregulated manner Supervisory programme and procedures • CBN/SEC: The number of inspections specifically focused on AML/CFT matters is very low, and a significant number of sectors seemed to have escaped supervision of compliance with its AML/CFT obligations • CBN/SEC: there appears an over reliance on the NFIU for the delivery of ongoing onsite

		AML/CFT supervisory programmes a factor which may be negatively influencing the effectiveness of the overall AML/CFT framework • CBN/ABCON: the current supervisory programme for bureau de changes raises serious doubts in terms of the number of inspections carried out for AML/CFT purposes and overall effectiveness • CBN: The determination of supervisory oversight beyond the commercial banks does not adequately take into account AML/CFT risks, and therefore there are serious concerns about the adequacy of supervision arrangements for community banks and other financial institutions such as primary mortgage institutions, finance companies and bureau de changes • NAICOM: due to recapitalization and consolidation within the insurance sector there have been no AML/CFT specific inspections since 2006. Uncertainty over a timetable for future inspections remain and therefore the effectiveness of current and future measures cannot yet be assessed.
24. DNFBP - regulation, supervision and monitoring	PC	• The number of compliance inspections for the DNFBP sector is extremely low and the current focus appears to be on publicity visits on AML/CFT awareness programs. Therefore, for the moment, there are no effective systems in place for the oversight and supervision of compliance with AML/CFT obligations in most of the non-financial sector. • There is need to enhance the SRO sector which would in turn raise the level of compliance in all sectors • The sanctions regime has yet to be implemented and therefore remains untested in relation to effectiveness and operational independence.
25. Guidelines &	NC	• The guidelines in place are relatively limited in

Feedback		scope and do not address some essential areas of the FATF Recommendations. Greater attention should be given to the requirements to conduct ongoing CDD and the need to pay particularly attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21 • Consideration could be given to further utilizing the NFIU newsletter to include more systematic feedback in the form of statistics and typologies as they relate to Nigeria. • The sector specific feedback is weak and ineffective. • There is insufficient feedback on STRs received and regular information on typologies provided to reporting entities
Institutional and other measures		
26. The FIU	PC	• The law is unclear regarding the operational autonomy of the FIU. • The extent of the Director's powers under the EFCC and its Board is ambiguous. • There is no legal provision that requires the NFIU to ensure that the information it holds is securely protected and disseminated only in accordance with the law. • FIU statistics on STRs and CTRs received, analyzed, and disseminated were either not provided or were inconsistent and could not be accurately verified. • Public reports issued by the FIU do not contain all required information, and statistics on STRs and CTRs, or trends and typologies on ML/TF.
27. Law enforcement authorities	LC	• The law does not clearly state whether the EFCC, DSS or the Attorney General is the proper authority responsible for prosecuting terrorist financing cases. • Specialized training is not available across all

		the LEAs and judicial bodies on ML/TF issues.
28. Powers of competent authorities	C	
29. Supervisors	PC	• • Supervisory bodies have the powers to conduct compliance inspections; however AML/CFT compliance inspections for a number of sectors are rarely conducted thus the existing powers remain untested and ineffective. • The number of AML/CFT inspections conducted and the number of violations detected are very low considering the size and vulnerability of covered institutions to money laundering. •
30. Resources, integrity and training	PC	• The structure of law enforcement agencies in Nigeria allows for operational independence in the investigation of ML/TF and other organized crime. However, the legal framework is often ambiguous with regards to supervisory line of authority • The AG's power over criminal prosecution is too broad. As a political appointee and also the Minister for Justice, there are concerns that this power may be used to hinder effective administration of justice in the country. • With the exception of EFCC, the other agencies are not adequately funded. Resource – human and material resources are limited across all the other enforcement agencies. • Training opportunities are not evenly distributed despite the presence of specialized training units in EFCC and NDLEA. • ICPC is not aware of best practices notes on PEPs and have not developed any risk analysis strategy. • There is a lack of information sharing between the ICPC and the NFIU.

		• There is no legal requirement defining the maximum length of time that a case may remain open.
31. National co-operation	PC	• While there is a framework in place for cooperation, the committee does not meet regularly. • The LEAs, and FIs committees seems to be working well but the LEAs lack considerable cooperation and the thus both lack the synergy required to combat ML and TF effectively • The EFCC have not institutionalized the inter-agency committee to enable it meet more frequently to develop policies and issue guidelines as the need arises. • AML/FT intelligence is not widely shared across relevant law enforcement agencies. EFCC is not often willing to share information on intelligence with other agencies when requested to do so.
32. Statistics	PC	• Statistics on ML/TF prosecution and investigation, including asset forfeited or confiscated are not centrally coordinated. • It is difficult to determine who is responsible for collating data on ML/TF. Though the EFCC Act empowers the EFCC and the NFIU to maintain statistics on money laundering, this is not the case in practice, as each agency involved in the formulation of ML/TF policy maintains separate records. • No statistics were provided by the Police regarding investigations on money laundering and terrorist financing, workforce training, or fiscal year financial statements. • Statistics concerning the total number of money laundering and terrorism and terrorist financing cases under investigation or prosecution in Nigeria are not centralized and not readily available for use.

33. Legal persons– beneficial owners	LC	• While the investigative powers are sound, there are limited measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. • Information on the company registrar pertains only to legal ownership/control (as opposed to beneficial ownership), is not verified, and is not necessarily reliable.
34. Legal arrangements – beneficial owners	PC	• Nigeria does not have a comprehensive trust law, thus inhibiting the level of information available in respect of trusts. • Information regarding BOs is not always available in a timely and accurate manner. • There are no guidelines regarding the management of trusts and beneficial owners.
International Cooperation		
35. Conventions	PC	• The FT Convention has not been fully implemented, as it requires a comprehensive legislation, regulation or guidance that complies with the provisions of FT Convention and FATF Special Recommendations on terrorist financing.
36. Mutual legal assistance (MLA)	PC	• There is no comprehensive MLA legislation • Lack of comprehensive TF legislation does not permit effective international cooperation for terrorist financing cases. • Due to lack of comprehensive legislation, guidance and policy on MLA, requests may be delayed. • Lack of statistics on MLA requests. • Lack of effective implementation of international cooperation mechanisms available in the country.
37. Dual criminality		• Nigeria's Constitution and criminal legal

	PC	principles does not permit granting of MLA request in all cases where dual criminality is required. • In the absence of MLA legislation and guidance, it was not possible to determine if Nigeria would grant MLA requests for extradition and other matters if it was related to less intrusive and non-compulsory measures.
38. MLA on confiscation and freezing	PC	• The Nigerian legislation on freezing, seizure and confiscation is applicable to the requests for international cooperation. • This power are limited with regard to SR.V because there is no legislation or guideline specifying that international cooperation may be granted to TF related freezing and confiscation requests. • The existing law is not clear on time limits for execution of MLA and extradition requests when there is need to freeze assets. • There is no legal requirement to share assets which are proceeds of joint confiscation actions • The law does not permit the establishment of asset recovery funds
39. Extradition	LC	• Extradition cannot be applied to terrorist financing offences.
40. Other forms of co-operation	LC	• There is limited statistics and information on the types of international cooperation granted.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	NC	• Section 15 of the EFCC Act which seeks to criminalize terrorist financing in Nigeria is not comprehensive and does not meet the requirements of 1999 FT Convention and FATF SR 1, and the UN Security Council Resolutions. • A comprehensive terrorist financing bill is yet to be passed into law.
SR.II Criminalize	NC	• The existing provision under Section 15 of the

terrorist financing		EFCC Act does not criminalize TF as required under Article 2 of the UN Convention on the Suppression of Terrorist Financing and the FATF SR. II in relation to provision/collection of funds to be used for terrorist acts or by terrorist organizations or individual terrorists. • The existing law does not state that TF is a predicate offence for money laundering. • There are significant gaps in the existing law in terms of its scope and implementation. • The draft Terrorist Prevention bill submitted to the National Assembly is not a law and therefore not enforceable.
SR.III Freeze and confiscate terrorist assets	NC	• The existing EFCC provision on the freezing of terrorist funds and assets does not cover terrorist organizations and entities • No procedure or guideline has been issued to LEAs and FIs on the implementation of the SR III freezing mechanisms • There is no mechanism in place for the enforcement of UN Security Council Resolutions 1267 and 1373. • There is no central authority with the responsibility for the implementation of TF freezing and confiscation measures.
SR.IV Suspicious transaction Reporting	NC	• There is no explicit requirement in the laws for reporting relating to terrorism financing or terrorist acts. • Other supervisory bodies have not issued any directives on terrorism financing or terrorism acts.
SR.V International cooperation	NC	• In the absence of comprehensive legislation and a guideline on international cooperation requests on TF cases the authorities cannot provide MLA to other countries as required by SR V
SR.VI AML requirements for money/value transfer services	PC	• Legal requirements exist to ensure that financial institutions that offer money or value transfer services are registered with the CBN. However, how the CBN determines FIs' overall level of compliance with the law is unclear.

		• Guidance on how to ensure compliance with the FATF standards for money or value transfer services is unclear. Current guidance for MVT services is limited and only provides the threshold amounts for reporting wire transfers. • It is unclear if the any sanctions, penalties, or fines have been enforced upon FIs for any instances of noncompliance with the FATF standards.
SR.VII Wire transfer rules	NC	• No explicit requirement in the laws for wire transfers. • The provisions in the Foreign Exchange Act and Circular on e-banking do not adequately provide guideline regarding the details of information in wire transfers to be preserved. • The threshold of US$10,000 is too high compared to US$1,000.00 set by FATF.
SR.VIII Nonprofit organizations	NC	• Few outreach programmes have been conducted to educate NPOs and religious organizations about threats from launderers and terrorists, thus they remain largely vulnerable. • Information on financial transactions, ownership and management structure are limited and may be different from what is filed at CAC unless they are compelled by the court to provide further information on ownership. • Since there is no monitoring, reporting or accounting mechanism in place, it is difficult to determine who has the controlling power over finance and administration of NPOs in Nigeria • Transaction and accounting records are not available to anybody except the NPOs themselves. They are accountable to themselves and this can be abused by some of them who rely on donations from funding sources that may be illicit. • Court orders would be required to compel NPOs to provide information to law enforcement agencies. • Information available to the public and for international cooperation is limited as the NPO

		determines what information to share with other people nationally or internationally. At most, they are only answerable to those who provide fund to them.
SR.IX Cross Border Declaration & Disclosure	PC	• The system does not specifically cover bearer negotiable instruments, (BNI) or currency and BNI transported through containerized cargo or by mail. • NCS does not cover the country's port of entries and as such a significant amount of travelers are not covered under the declaration system. • NCS staff members are not well spread out and still lack the requisite skills to manage the data base for the declaration system. • There are currently no specific sanctions for failure to disclose or for making a false declaration.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT Systems	Recommended Actions (listed in the order of priority)
1. General	
2. Legal System and Related Institutional measures	
2.1 Criminalization of ML (R.1 & 2)	• A comprehensive definition of predicate offences and other terms should be included in the AML legislation. At a minimum, the country should include a list of FATF 20 minimum offences criminalized under the Nigerian law. • The sanction regime should be reviewed and made to be proportionate and dissuasive. • The authorities should develop a procedure or guideline to check the abuse of the plea bargaining or compounding of offences by LEAs.
2.2 Criminalization of Terrorist Financing (SR.I)	• It is recommended that Nigeria should enact a comprehensive TF legislation
2.3 Confiscation, freezing and seizing the proceeds of crime (R.3)	• It is recommended that Nigeria should enact a standalone Asset Recovery and Confiscation law (including civil based confiscation), to address the weakness in the current legal framework; • Nigeria should develop a procedure to guide the various agencies involved asset recovery efforts to ensure transparent and efficient management of asset recovery processes, compilation of statistics, repatriation and establishment of asset recovery fund.
2.4 freezing of funds used for terrorist financing (SR.III)	It is recommended that Nigeria should enact a comprehensive TF legislation taking into consideration the following issues: • Dissemination, implementation and monitoring of UN Security Council Resolutions; • Identify an agency to manage and implement a new TF regime; • Development of a procedure for de-listing and unfreezing

	of funds and other assets; • Defining the roles of relevant institutions involved in handling TF matters; • Protecting the rights of bona fide third parties • Development of a centralized statistical data on the actions taken under TF laws.
2.5 The financial intelligence units and its functions	• It is recommended that the AML regime should be reviewed to provide clear operational autonomy to the NFIU taking into consideration the weaknesses identified in the current legal framework • The NFIU should establish a management structure that will address issues related to transparency, accountability and confidence building amongst all stakeholders • The AML regime should include a legal provision that requires the NFIU to ensure that the information it holds is securely protected and disseminated only in accordance with the law. • NFIU should work closely with other agencies in the proper coordination of AML/CFT related matters in Nigeria • NFIU should maintain comprehensive statistics on STRs and CTRs, including FT related statistics • NFIU should issue public reports and annual reports containing all required information, and statistics on STRs and CTRs, or trends and typologies on ML/TF. • The NFIU should increase the number of analysts' staff, including the provision of specialized to all categories of staff to enhance the efficiency of the agency.
2.6 Law enforcement, prosecution authorities and other competent authorities (R. 27)	• The laws establishing the law enforcement agencies in Nigeria should state clearly the legal mandate of each of the agencies in order to avoid overlap, confusion, and lack of coordination. • Specialized training should be made available to all relevant agencies on all aspects of ML/TF especially given the very complex nature of these crimes. • NFIU should enhance its capacity to conduct financial analysis and disseminate them in a prompt and efficient manner.

	• Coordination of intelligence data and information should be improved through a more structured process.
2.7 Cross Border Declaration and Disclosure	• A comprehensive sanctions regime should be included in the CEMA Act • Customs staff should be trained on detection of cash smuggling, money laundering and terrorist financing • Ensure that all entry and exit points in the country are covered as soon as possible
Preventive measures – Financial Institutions	
3.1 Risk of money laundering and terrorist financing	• It is recommended that Nigeria should commence without further delay the assessment of ML/TF threats and risks in order to ensure that investigation and prosecution resources and prevention measures are properly managed and applied where it is urgently required.
3.2 Customer due diligence including enhanced or reduced measures	• An explicit statement should be included in the MLP Act that precludes the opening and maintaining of numbered and anonymous accounts in order to increase the effectiveness of the provisions of the law. • The MLP Act should be reviewed to clearly impose the requirement for FIs to conduct CDD in each of the categories in Criterion 5.2 of the FATF Methodology. • The reporting requirement for occasional transactions that are wire transfers is USD 5,000, which exceeds the FATF standard of USD 1,000. Nigeria should lower the reporting threshold for such cases in order to comply with the FATF standard. • FIs and OFIs should be trained to understand how to file correct CTRs to enhance the overall effectiveness of the AML/CFT regime. • Steps should be taken by BDCs to comply with the MLP Act requirement and FATF Recommendations on the verification of their customers' identification information. • FIs should ensure that they maintain updated CDD information on their customers, by conducting regular

	reviews. • Nigeria should issue further guidance to clarify FIs responsibilities in determining beneficial ownership. • Nigerian authorities should provide clear guidance on how to identify high risk customers, and on appropriate monitoring and reporting procedures to apply for such customers. • The recently agreed upon definition of PEPs by the Nigerian regulatory authorities should be formally issued in legislation or guidance for FIs to determine whether their existing customers, potential customers, or any beneficial owners are PEPs. Additionally, clear enhanced CDD procedures should be developed and provided to FIs in order to increase the effectiveness of their risk monitoring for PEP accounts • Supervisory authorities should define a correspondent banking relationship in law or regulation. It is further recommended that Nigeria provide clear guidance to FIs for determining the suitability of correspondent banks, as well as for monitoring and maintaining such correspondent banking relationships. • It is recommended that the CBN Guidance on E-Banking be revisited to include clear guidance for conducting ongoing due diligence and enhanced CDD measures.
3.3 Third parties and introduced business (R.9)	• A clear statement should be included in the AML law and the KYC manual regarding the conduct of due diligence for third parties and introduced businesses. • The Insurance and Investment/Security supervisory authorities should provide guidance to the sector regarding the conduct of due diligence for third parties and introduced businesses.
3.4 financial institution secrecy or confidentiality	• Information sharing needs to be improved across all LEAs and FIs.
3.5 Record keeping and wire transfer rules (R 10 &SR VII)	• Preservation of the information and records of FIs and OFIs should be improved. • Information being preserved should be uniform across the financial system of Nigeria. • Authorities should include explicit requirement in the

	laws for wire transfers generally and especially on terrorist financing. • The provisions in the Foreign Exchange Act and Circular on e-banking should adequately provide guideline regarding the details of information in wire transfers to be preserved. • The threshold of US$10,000 is too high compared to US$1,000.00 set by FATF and should be amended.
3.6 Monitoring of transactions and relationships (R. 11& 21)	• FIs should be required to further examine transactions under Rs.11 and 21 before submitting a report in writing and not treat such transaction as ordinary STRs or CTRs. • A framework to deal with non-compliant countries with FATF standards should be developed. The NFIU and CBN should establish a mechanism of providing information to FIs on countries that do not apply FATF recommendation. • In addition appropriate counter measures should be developed for application by the FIs in dealing with such countries that do not apply FATF Standards.
3.7 Suspicious transactions reports and other reporting (R. 13,14,19, 25, & SR IV)	• NFIU should provide further training and guidance on STRs reporting to ensure uniform reporting • The authorities should consider either including in the AML legislation or in a regulation a clear definition of the term "suspicious" to enhance proper reporting from FIs and OFIs. • Guidelines should be made more consistent and streamlined to improve the quality of STRs reported by reporting entities. • An explicit legal protection for reporting institutions and their employees should be included in the AML legislation. • A sizeable informal sector that are not covered in the reporting requirement (large informal exchange bureau - unlicensed by CBN) and DNFBPs should be included either through the issuing of a regulation or through the amendment of the MLP Act. • Authorities should reduce the reporting threshold for corporate entities, which is currently N5 million

	(equivalent to USD 43,000), as it exceeds the FATF threshold of USD 15,000. • There should be an explicit requirement in the law for STRs related to terrorism financing. • It is recommended that other supervisory institution should issue further directives or guidance on the reporting if terrorism financing STRs.
3.8 Internal controls, compliance, audit and foreign branches (R.15 &22)	• Supervisory authorities should be trained on how to monitor and ensure compliance with AML/TF regime. • FIs and OFIs should be required to put adequate framework for internal control policies, and audit in compliance with the AML regime. • Nigeria should adopt more specific rules relating to foreign branches and monitoring of transactions from non-compliant countries as required by R.22.
3.9 Shell banks (R.18)	• Nigerian authorities should establish a legal framework that prohibits the establishment or operation of shell banks in Nigeria and to require FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks
3.10 The supervisory and oversight system- competent authorities and SROs, Role, functions, duties, and powers, (including sanctions) (R. 23, 29, 17 & 25)	• **R. 17** - The range of available sanctions should be made more comprehensive in order to reflect the FATF requirements • R. 23 - it is strongly recommended that the relevant competent authorities should enhance the supervisory framework including the number of onsite inspections and off-site monitoring arrangements • It is recommended that CBN, NAICOM and SEC give serious consideration towards developing a more active role in AML/CFT focused inspections, thus having less overall reliance on the limited resources within the NFIU. • It is recommended that supervision should be extended to include all sectors that have not been covered. A large section of the Insurance sector and the BDCs that currently remain unsupervised for AML/CFT purposes should be included in the supervision plan.

	• More resources should be deployed towards supervision visits and training of staff in the supervision department s across the relevant agencies. • **R.25 –** The authorities are advised to enhance feedback mechanism. Further guidance should be issued in this regard to ensure a coherent and consistent approach to feedback to the sector. • **R. 29 -** Available sanctions should be effectively utilized, applied and recorded so as to improve overall compliance among those sectors that have major deficiencies.
3.11 Money value transfer services (SR. VI)	• It is recommended that clearer guidelines be provided to financial institutions to ensure that their operations for MVT services, are in compliance with the FATF standards
4. Preventive Measures – Non Financial Businesses and Professions (DNFBPs)	
4.1 Customer due diligence and record keeping (R. 12)	• Nigerian authorities should ensure that DNFBPs understand their CDD obligations as provided under the MLP Act. • Stronger CDD measures as recommended under Recommendation 5. • Casinos should be required to perform enhanced due diligence for higher risk customers, and put adequate procedures in place for verification of customer's identity. • The same recommendations made previously for action by Nigeria with respect to Recommendations 6, 8 - 11 are also applicable for the DNFBP.
4.2 Suspicious transaction reporting (R.16)	• Nigeria should include a statement in the AML legislation requiring DNFBPs strengthen their internal control and audit systems and to pay special attention to business and transactions involving jurisdictions that do not apply FATF Recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	• SCUML should ensure that there are adequate measures and national procedures in place for the licensing and ownership of casinos • The robustness of 'fit and proper' tests and general market entry requirements should be reviewed. • Enhancement of relationship between DNFBPs

	supervisory authorities with the SROs could help raise the level of compliance amongst the various sectors • The sanctions regime should be utilized and applied to enhance compliance by this sector.
4.4 Other non-financial businesses and professions (R.20)	• It is recommended that Nigeria should implement modern secure transaction techniques for use by non-financial businesses and professions.
5. Legal Persons and Arrangements & Non-Profit Organizations	
5.1 Legal Persons – Access to beneficial ownership and control information	• The sanctions regime under the CAMA should be made proportional and dissuasive. • The CAC should review its law to include verification of beneficial owners.
5.2 Legal Arrangements – Access to beneficial ownership and control information	• The authorities are advised to draft a separate and comprehensive trust law to clear any existing ambiguities.
5.3 Non-profit organizations	• SCUML should develop a more strategic program to enhance interaction with NPOs for the purpose of fulfilling their AML/CFT obligations.
6. National and International Cooperation	
6.1 National co-operation (R.31)	• The EFCC should institutionalize the inter-agency committee to enable it meet more frequently to develop policies and issue guidelines on the coordination of AML/CFT measures in Nigeria. • It is recommended that the NFIU should play a significant role in the coordination process and that it should ensure that ML/FT intelligence is widely shared across relevant law enforcement agencies.
6.2 The Conventions and UN Special Resolutions (R. 35 & SR II)	• Nigeria should fully implement Terrorist Financing Convention, FATF Special Recommendations on TF, the United Nations Security Council Resolutions 1373 and 1267.
6.3 Mutual legal assistance (R. 36-38 & SR V)	• Nigeria's Constitution and criminal legal principles does not permit granting of MLA request in all cases where

	dual criminality is required. This principle is applicable to all criminal offences The authorities should a enact comprehensive mutual legal assistance legislation, in addition to issuing guidance to all relevant agencies to ensure efficient and prompt coordination of MLA requests and uniform application of MLA treaties. • It is recommended that Nigeria should waive the application of dual criminality to non-coercive measures and requests from other countries as the current regime is too restrictive and does not comply with FATF standards. • Nigeria should review its asset recovery and confiscation regime to permit asset sharing and the establishment of an asset fund. The fund will be used in the strengthening of various weaknesses existing in the AML/CFT regime and lead to transparent management of forfeited assets. • A comprehensive TF legislation should be enacted as soon as possible.
6.4 Extradition (R.39,37 & SR V)	• Nigeria should review the current extradition legislation to bring it up to date with current developments in international law.
6.5 Other forms of co-operation (R.40 & SR.V)	
7. Other issues	
7.1	• The EFCC and the NFIU should enhance the coordination and maintenance of statistics on ML/TF prosecution and investigation, including assets recovered from convicted individuals and organizations within and outside Nigeria. • Adequate resources and personnel should be deployed towards achieving this goal as the absence of such statistics is impacting on the overall effectiveness of the current AML/TF regime.

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

ANNEX 1: DETAILS OF BODIES MET ON THE MUTUAL EVALUATION ONSITE MISSION: MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

Annex 1:

Ministries:

- Ministry of Finance;
- Ministry of Justice;
- Ministry of National Security/ Interior;
- Ministry of Foreign Affairs;
- Ministry of Commerce: Corporate Affairs Commission (CAC), and Special Control Unit on Money Laundering (SCUML).

Criminal Justice and Operational Agencies:

- The Nigerian Financial Intelligence Unit (NFIU);
- The Nigerian Police Force (NPF);
- The Economic and Financial Crimes Commission (EFCC)
- National Drug Law Enforcement Agency (NDLEA)
- Independent Corrupt Practices (and other Related Offences) Commission (ICPC)
- Department for State Security Services (SSS);
- Nigerian Intelligence Agency (NIA);
- Nigerian Customs Service (NCS)
- Federal Inland Revenue Services (FIRS)

Financial Sector Bodies:

- Central Bank of Nigeria (CBN);
- Securities and Exchange Commission (SEC);
- National Insurance Commission (NAICOM);

Financial Institutions

- First Bank of Nigeria
- Hague Community Bank
- Access Bank

Designated Non -Financial Businesses and Institutions:

- Nigerian Institute of Estate Surveyors and Valuers
- Nigerian Bar Association
- Zero Corruption Coalition (NPO)
- Institute of Chartered Accountants of Nigeria
- BGL Securities (Capital Market Operators)
- Association of Bureau de Change of Nigeria
- Fansman Bureau de Change
- Leadway Assurance PLC (Insurance Sector)
- Casino, Transcorp Hilton Hotel, Abuja
- Casino, Sheraton Hotels, Abuja

ANNEX 2: LIST OF LAWS, REGULATIONS AND OTHER GUIDANCE RECEIVED

1. The National Drug Law Enforcement Agency Act, (NDLEA) 1989 as amended
2. National Security Agencies Act, Cap 278 LFN 1990.
3. Extradition Act Cap 125 LFN 1990
4. Chapter 235 Laws of the Federation of Nigeria 1990 on Mutual Legal Assistance
5. Banks and other Financial Institutions Act, (BOFIA) 1991 as amended
6. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995
7. Money Laundering Act, 1995
8. The Independent Corrupt Practices and Other Related Offences Commission, (ICPC) Act, 2000.
9. 1999 Constitution of Nigeria.
10. National Insurance Commission Act, 1997;
11. Investment and Securities Act (ISA), No. 45 1999;
12. Insurance Act, 2003
13. Nigerian Deposit Insurance Cap 102, Laws of the Federation of Nigeria, 2004
14. Money Laundering (Prohibition) Act, 2004 (MLP Act)
15. The Economic and Financial Crimes Commission Act, 2004 (EFCC)
16. The Fiscal Responsibility, Act, 2007
17. 2007, NEITI (Nigerian Extractive Industries Transparency Initiative) Act;
18. 2007, Public Procurement Act;
19. 2007, FIRS (Federal Inland Revenue Service) Act;
20. 2007, Tax Reform Acts;
21. 2007, CBN (Central Bank of Nigeria) Act;
22. 2007, Statistics Act;
23. The Customs and Excise Management Act, CAP 84 (LFN 1990 (CEMA)
24. Criminal Code
25. Penal Code
26. The Nigerian Police - Police Force Act, Cap 359 LFN
27. The National Security Agencies Act,

28. The Central Bank of Nigeria Decree 1991
29. Central Bank Act, 2007

International Conventions

30. 1988 United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances (the Vienna Convention),
31. United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000;
32. International Convention for the Suppression of the Financing of Terrorism (CFT Convention), 1999;
33. Cap 235 LFN 1990 on Mutual Legal Assistance with Commonwealth Member States
34. ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region, 2006;
35. Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
36. OAU Convention on the Prevention and Combating of Terrorism, 1999;
37. The Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers
38. UN Security Council Resolution 1267 and 1373
39. ECOWAS Protocol on Mutual Legal Assistance

Regulations:

40. SEC (Securities Exchange Commission) Rules and Regulations 2000 (as amended);
41. Insurance Industry Policy Guidelines (IIPG) of 2004;
42. Know Your Customer Directive of 2001;
43. Circular on STRs reporting to EFCC/NFIU – April, 2005
44. Circular on CTR reporting to EFCC/NFIU – March, 2006
45. Circular issued to OFIs on STR reporting to EFCC/NFIU - June, 2005
46. Circular on terrorist finance related STRs – August, 2006

47. KYC manual to FIs and OFIs by CBN in 2003
48. Know Your Customer Manual 2002