DO FATF RECOMMENDATIONS INFLUENCE RESTRICTIVE LEGISLATIONS?

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FACTSHEET 03

In Nigeria, Recommendation 8 (R8) may have influenced the categorization of non-profit organizations (NPOs) as Designated Non-financial Businesses and Professionals (DNFBPs) for the purposes of anti-money-laundering (AML) regulation. This Factsheet 03 explains how the revised R8 affects NPOs, including non-governmental organization (NGOs), and how countries determine the organizations at risk.

How Do FATF Recommendations Influence Local Legislation?

The implementation of Financial Action Task Force (FATF) Recommendations can influence policy choices and governmental measures designed to curtail criminal activity, with implications for regulatory outcomes in the domestic arena. In Nigeria, the country's regulatory framework for anti-money laundering (AML) and countering financing of terrorism (CFT) can be traced to the requirements of FATF. For instance, the Special Control Unit Against Money Laundering (SCUML) acknowledges that its establishment in 2005 was 'a commitment by Nigeria, through the Federal Government-constituted Presidential Inter- Agency Committee, to the Financial Action Task Force'. (See SCUML website).

Determined to have its name removed from FATF's list of countries that are not compliant with FATF Standards, the Nigerian government rolled out several regulations and institutions to tackle a number of identified regulatory gaps. The Money Laundering (Prohibition) Act (the "MLA") and the Terrorism (Prevention) Act, 2011(as amended in 2013) form part of the legislative interventions aimed at removing Nigeria from FATF's shame list.

Do FATF-induced Local Legislation(s) Affect the Work of Non-profit Organizations (NPOs)?

The MLA imposes certain obligations on Designated Non-Financial Institutions (DNFI), such as the obligations to report suspicious transactions, to carry out customer due diligence and to keep record s of customers and transactions for a period of 5 years. The term, "Designated Non-Financial Institution (DNFI)", used in the MLA, means the same thing as "Designated Non-Financial Businesses and Professions (DNFBPs)". The DNFBPs refer to certain industries and professions in the non-financial sector that are presumed to have a similar potential to financial institutions to be used for concealing criminal revenues. Examples include lawyers, accountants, tax advisors, dealers in precious stones and metals, notaries and other independent legal professionals. In 2013, SCUML Regulation expanded the definition of DNFI (or DNFBP) to include NPOs.

SCUML has the responsibility to "monitor, supervise and regulate the activities of DNFIs in Nigeria. SCUML works in collaboration with the Economic and Financial Crimes Commission (EFCC) and the Nigerian Financial Intelligence Unit (the "NFIU") (the national repository of financial disclosures of cash-based transaction reports, currency transaction reports and suspicious transaction reports). Although the FATF Standards do not classify NPOs as DNFBPs, the SCUML Regulation has done so, and is therefore, binding on NPOs in Nigeria.

Obligations of DNFBPs under the FATF Standards

- Under the FATF Standards, DNFBPs are required to have AML/CFT programme designed on a risk-based approach, which shall at a minimum include the following:
- Internal policies, procedures and controls to prevent ML and TF
- Customer due diligence. Appointment of a Compliance Officer or Money Laundering Reporting Officer (MLRO).
- Currency Transactions Report ("CTR")
- NPOs are required to file CTR on all transactions in excess of ₦5, 000,000.00 or its equivalent in foreign currency for individual and ₦10, 000,000.00 or its equivalent in foreign currency for a corporate body to the NFIU and a copy to SCUML.
- Suspicious Transactions Report ("STR"). NPOs shall file STR where it is unable to ascertain the identity of the beneficiary/beneficial owner and /or where it is unable to determine risk factors applicable to the beneficiary/beneficial owner.

The effectiveness of a country's AML/CFT regime will be assessed based on the following eleven (11) immediate outcomes.

1. Risk Policy and Coordination
2. Risk Policy and Coordination
3. Supervision
4. Preventive Measures
5. Legal Persons and Arrangements
6. Financial Intelligence
7. ML Investigation and Prosecution
8. Confiscation
9. TF Investigation and Prosecution
10. TF Preventive Measures and Financial Sanctions
11. PF Financial Sanctions

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