



Key Contacts



Chinedu Anaje
Partner

chinedu.anaje@ao2law.com



Oluwasijibomi Alafe
Senior Associate

oluwasijibomi.alafe@ao2law.com



Chinemeze Eze
Senior Associate

chinemeze.eze@ao2law.com



Kelvin Erue
Associate

kelvin.erue@ao2law.com



Testimony Oluwadare
Associate

testimony.oluwadare@ao2law.com

APPLICATION OF THE MONEY LAUNDERING (PROHIBITION) ACT TO LEGAL PRACTITIONERS IN NIGERIA: THE JOURNEY SO FAR

The extant Money Laundering Act was enacted in 2022 and it repealed the Money Laundering (Prohibition) Act 2011. The Money Laundering (Prevention and Prohibition) Act (hereinafter referred to as the MLA 2022) establishes a robust legal and institutional framework aimed at preventing and prohibiting money laundering in Nigeria. It further mandates the creation of the Special Control Unit within the Economic and Financial Crimes Commission to oversee and ensure strict compliance with the salient provisions of the MLA 2022.

NOVEL PROVISIONS OF THE MONEY LAUNDERING ACT, 2022 GUIDING MONEY LAUNDERING FOR PROFESSIONALS, FINANCIAL AND NON-FINANCIAL BUSINESSES

A. OBLIGATIONS OF DESIGNATED NON - FINANCIAL BUSINESSES

The provisions of Section 6 of the MLA, 2022 expressly provide that designated non-financial businesses involved in cash transactions are required to comply with specific regulations to enhance transparency and prevent money laundering. These businesses must submit a declaration of their activities to the Special Control Unit Against Money Laundering (SCUML). New businesses must make this declaration before they begin operations while existing businesses must do so within three months of the Act's commencement.

Before conducting any transaction exceeding US\$1,000, businesses must identify their customers by having them complete a standard data form and present a valid photo ID, as prescribed by SCUML. Additionally, businesses are required to record all transactions in chronological order, including details such as the customer's surname, forenames, and address, and forward this register to SCUML. This register must be preserved for at least five years after the last recorded transaction.

Non-compliance with these regulations results in significant penalties. Businesses that fail to meet the customer identification and reporting requirements within seven days of a transaction

face a daily fine of ₦250,000 and may also face suspension, revocation, or withdrawal of their license, depending on the severity of the violation.

B. OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

In defining a suspicious transaction, Section 7 of the MLA, 2022 stipulates that a transaction is considered suspicious if it is unusually frequent, complex, lacks economic justification, deviates from typical patterns, or appears linked to criminal activities like money laundering or terrorist financing. In such cases, the involved financial institution or non-financial business must immediately report the transaction to the Special Control Unit Against Money Laundering (SCUML).

Within 24 hours, the business entity must submit a detailed written report to SCUML, outlining the transaction's details, reasons for suspicion, and the identities of involved parties. The entity must also take measures to prevent the laundering of illegal proceeds and report any actions taken to SCUML.

SCUML in turn must acknowledge receipt of the report and may request additional information. It can also issue a stop notice on the transaction for up to 72 hours if deemed necessary. If no stop notice is issued, or if it expires without further action, the transaction may proceed.

Where the source of the funds cannot be clarified within the stoppage period, the Federal High Court may order a block on the funds or accounts. Failure to comply with these requirements results in a daily fine of ₦1,000,000. However, directors, officers, and employees who act in good faith are protected from civil or criminal liability.

C. DUTY TO KEEP RECORDS

Section 8 expressly states that financial institutions and designated non-financial businesses must keep detailed records of both domestic and international transactions for at least five years after the transaction is completed. They must also retain records obtained through specified sections of the Act, including account files, business correspondence, and analysis results, for at least five years after the end of the business relationship or an occasional transaction. These records must be detailed enough to allow for easy reconstruction of individual transactions and must be readily accessible to the authorities.

Section 9 further provides that the records alluded to in section 8 of the Act must be provided upon request to competent authorities, regulatory bodies, or judicial persons as specified by the Unit or Special Control Unit Against Money Laundering, with the details of these specifications published in the Federal Government Gazette.

D. OBLIGATION TO REPORT SUBSTANTIAL TRANSACTIONS

Section 11 provides that financial institutions and designated non-financial businesses must report any transaction, deposit, or fund transfer exceeding ₦5,000,000 (for individuals) or ₦10,000,000 (for corporate bodies) to the Unit or the Special Control Unit Against Money

Laundering within seven days. Other individuals can voluntarily report transactions exceeding ₦1,000,000 or ₦5,000,000 for bodies corporate. Non-compliance incurs fines ranging from ₦250,000 to ₦1,000,000 per day. Furthermore, in section 11(4) of the Act, the Act expressly states that legal professional privilege does not apply to transactions related to property sales, business purchases, client money management, account operations, or the creation of trusts and companies, nor to any activities related to unlawful acts.

THE SPECIAL CONTROL UNIT AGAINST MONEY LAUNDERING

The Special Control Unit against Money Laundering (SCUML) is a department under the Economic and Financial Crimes Commission charged with the responsibility of registering monitoring, and supervising the activities of Designated Non-Financial Businesses and



Professions (DNFBPs) in line with the Money Laundering (Prevention & Prohibition) Act, 2022 and Economic & Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Proliferation of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions and other Related Matters) Regulations, 2022. The functions of the SCUML are as follows;

1. Registration and certification of DNFBPs in Nigeria.
2. Sensitization of DNFBPs in Nigeria on their compliance obligations, under the Money Laundering Prevention and Prohibition Act 2022 and the implementation guidelines.
3. Monitoring and supervision of the activities of DNFBPs as it relates to AML/CFT.
4. Conducting off-site, on-site, and spot checks inspection of DNFBPs.
5. Taking necessary enforcement actions to ensure compliance with the AML/CFT Laws and Regulations.
6. Collection of statutory reports: Cash based transaction reports (CBTRs) and Currency Transaction Reports (CTRs) for onward forwarding to the Nigeria Financial Intelligence Unit (NFIU).
7. Establishment and maintenance of comprehensive database of DNFBPs and their financial transactions to support tactical, operational and strategic analysis as well as policy options in combating ML/FT.
8. Strategic analysis using available data to identify emerging trends and patterns in money laundering and terrorist financing.

9. Provision of vital information relating to DNFBPs money trails to assist criminal investigations by Law Enforcement Agencies in order to boost the fight against economic and financial crimes within the DNFBPs sector in Nigeria.
10. Collaboration with stakeholders to ensure compliance with AML/CFT measures within the DNFBPs sector in Nigeria.



THE LEGAL JOURNEY SO FAR

The intersection of legal practice and Anti- Money Laundering regulations has long been a battleground for Nigerian courts and lawmakers alike. So much so that three notable cases have shaped the discourse on the classification or otherwise of legal practitioners as designated non-financial businesses under the extant Anti Money Laundering laws. More recently, the Federal High Court, Abuja in the case of **Abu Arome V. CBN** further entrenched the legal position previously established by the Court of Appeal in 2021. These notable judicial decisions include;

1. REGISTERED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION V. A.G. FEDERATION & ORS [1]

The journey began with a pivotal decision by the Federal High Court, Abuja in 2015. The registered trustees of the Nigerian Bar Association instituted an action on 15th March 2013, praying Honourable Court for “A declaration that the provisions of Section 5 of the Money Laundering (Prohibition) Act, 2011, insofar as they purport to apply to legal practitioners are invalid, null and void.” Amongst other declaratory and injunctive reliefs.

Upon consideration of arguments by counsel and the applicable extant laws, the learned trial judge was of the view that “there are stringent qualification and regulatory measures that are attached to the practice of legal profession, which makes it unnecessary for them to be included

in the category of DNFI.” Furthermore, according to the learned trial judge, certain penalties like the revocation of licence to practice envisaged by the now defunct Money Laundering Act, 2011 is not applicable to legal practitioners because only the Supreme Court (being the custodian of the roll of legal practitioners licensed to practice law) has the power to confirm the suspension of a lawyer or the revocation of licence to practice where such lawyer has been found wanting following investigations by the Legal Disciplinary Committee. Consequently, the Honourable Court decided that the provisions of the now repealed Money Laundering Act, 2011 were invalid, null and void to the extent that they purport to apply to legal practitioners.

2. THE FEDERAL REPUBLIC OF NIGERIA V. CHIEF MIKE OZEKHOME [2]

Following the Federal High Court’s decision in 2015, the decision of the Court of Appeal in 2021, is also of veritable importance wherein the Honourable Court emphatically stated albeit with regards to the now defunct Money Laundering (Prohibition) Act 2011, thus; “A legal practitioner is entitled to his fees for professional services rendered, and such fees cannot be rightly labelled as proceeds of crime. Further, it is not a requirement of the law that a legal practitioner would go into enquiry before receiving his fees from his client, to find out the source of the fund from which he would be paid...”.

In the wordings of the Appellate Court, “Legal practitioners are excluded from the definition of ‘designated non-financial institution’ as contained in the Money Laundering Prohibition Act, 2011. Further, section 25 of the Money Laundering Prohibition Act, 2011 is inconsistent with section 192 of the Evidence Act, and therefore section 25 of the Act gives way to section 192 of the Evidence Act, it cannot override or amend the Evidence Act. The Money Laundering Prohibition Act as far as it applies to legal practitioners is invalid, null and void. In this case, the trial court rightly held that legal practitioners are excluded from those tagged ‘designated non - financial institutions’ under the Money Laundering Prohibition Act, 2011.

3. ABU AROME V CBN [3]: THE JUGDEMENT AND IMPLICATIONS

In an attempt to circumvent the above decisions of the Court, section 30 of the 2022 iteration of the Anti-Money Laundering Act re-included Legal Practitioners in the category of designated non-financial businesses and institutions required to register with the SCUML and fulfill reporting obligations.

Fast forward to 2023, and the Abu Arome case came before the Federal High Court, Abuja. This case is particularly noteworthy because unlike the previous decisions it was decided under the newly enacted 2022 Act, which specifically included lawyers and notaries within the definition of designated non-financial businesses. The Applicant in the instant suit sought to nullify certain provisions of the Money Laundering Act 2022, specifically sections 6, 7, 8, 9, 11, and 30, as they pertain to lawyers. Abu contended that similar provisions in the 2011

amendment of the Money Laundering Act were invalidated in 2013 following a challenge by the Nigerian Bar Association (NBA).

In light of the foregoing, he subsequently requested the court to determine whether sections 6, 7, 8, 9, 11, and 30 of the Money Laundering (Prevention and Prohibition) Act 2022, as they apply to legal practitioners, are unconstitutional, void, and ineffective, considering the earlier decision of the appellate court. Additionally, he sought a declaration that the inclusion of "legal practitioners and notaries" as "designated non-financial businesses and professions" under section 30 of the Act undermines the confidentiality obligations owed to clients under Section 192 of the Evidence Act 2011 and Rule 19(1) of the Rules of Professional Conduct for legal practitioners. Abu also requested that the court lift the restriction imposed on his law firm's bank accounts, which had been restricted following a Central Bank of Nigeria (CBN) circular issued in line with the Money Laundering Act 2022.

Despite the express inclusion of legal practitioners and notaries as designated non-financial businesses under the new 2022 Act, the Presiding Judge, Obiora Ekwuatu on 19th of July, 2024, ruled that sections 6, 7, 8, 9, 11, and 30 of the Money Laundering Act 2022 are inconsistent with section 37 of the Constitution, sections 20 and 21 of the Legal Practitioners Act, and section 192 of the Evidence Act 2011. This ruling was no doubt based on the precedent set by the Court of Appeal, reaffirming the court's earlier stance that such regulatory impositions were not applicable to legal practitioners. The Federal High Court's decision highlights that notwithstanding the legislative overreach and maneuvers, the decision of the Court of Appeal still holds sway until overturned by the Supreme Court.

THE ADVENT AND IMPLICATIONS OF THE RULES OF PROFESSIONAL CONDUCT (RPC) 2023

On the 6th of June, 2023, The General Council of the Bar in exercise of the powers conferred on it by Section 12(4) of the Legal Practitioners Act [4] made a new iteration of the Rules of Professional Conduct. The new rules more particularly contained in Rules 55 to 77 of the RPC 2023 prescribe an Anti – Money Laundering (AML) Policy and Combat the Financing of Terrorism (CFT) which is a clear indication of the NBA's (Nigerian Bar Association) commitment to "fight against money laundering, terrorism, bribery and corruption and other financial crimes. [5] the rules also provide for the establishment of the Nigerian Bar Association Anti – Money Laundering Committee (NBAAMLC) [6] to advise the NBA on the implementation and to monitor the compliance of firms or legal practitioners with respect to the Rules.

For the avoidance of doubt, the RPC 2023 does not in any way enjoin legal practitioners to comply with the attendant obligations codified in the MLA 2022. However, it must be reiterated that Legal practitioners are mandated to comply with the internally regulated AML and CFT policies and guidelines as prescribed by the RPC 2023 as opposed to the SCUML and by extension the MLA 2022. [7]

CONCLUSION

The journey of Anti-Money Laundering laws and their application to legal practitioners has been marked by significant judicial and legislative milestones. The recent Abu Arome case underscores the enduring influence of the Court of Appeal's decision even in the face of the 2022 Act's intentional inclusion of legal practitioners and demonstrates the complexities involved in enforcing Anti-Money Laundering laws in every day legal practice. A complexity that in the opinion of this writer the RPC 2023 aims to resolve. While we are not aware of any appeal to the Supreme Court on this issue, the positions of the courts in *Registered Trustees of the Nigerian Bar Association v. A.G. Federation & Ors, Federal Republic of Nigeria v. Chief Mike Ozekhome*, and *Abu Arome v. CBN* remain the law until the Supreme Court rules otherwise.

REFERENCE

[1] FHC/CS/173/2015

[2] (2021) NWLR (Pt. 1782) 448

[3] FHC/ABJ/CS/25/2023

[4] Cap L11 Laws of the Federation of Nigeria 2004 as amended

[5] <https://www.nigerianbar.org.ng/anti-money-laundering-policy>

[6] Rule 73

[7] [A REVIEW OF THE RULES OF PROFESSIONAL CONDUCT \(RPC\), 2023 - trustedadvisorslaw.com](https://www.trustedadvisorslaw.com)