Anti-money laundering and counter-terrorist financing measures

Federal Republic of Nigeria

1st Enhanced Follow-up Report



The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) is a specialised institution of ECOWAS and a FATF-Style Regional Body that promotes policies to protect member States' financial systems against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter terrorist financing (CFT) standard.

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Federal Republic of Nigeria: 1st Enhanced Follow-up Report

I INTRODUCTION

1. The mutual evaluation report (MER) of the Federal Republic of Nigeria was adopted in August 2021 during the 2nd Inter-Sessional Working Groups and Technical Commission/Plenary meetings held in Abidjan, Cote d'Ivoire and published in October 2021. Since it met the thresholds of having eight (8) or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for seven (7) or more of the eleven (11) effectiveness outcomes, Nigeria was placed under the enhanced follow-up process.

2. This Follow-Up Report (FUR) analyses Nigeria's progress in addressing the technical compliance requirement of the Recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendation 15 which has changed since the MER was adopted.

3. This report does not analyse any progress Nigeria has made to improve its effectiveness.

4. The assessment of Nigeria's request for technical compliance re-ratings and the preparation of this report was undertaken by Mr. Emil Meddy, Financial Intelligence Centre, Ghana; Dr. Jonathan Nii Okai Welbeck, Bank of Ghana, Ghana; Mr. David Borbor, Financial Intelligence Unit, Sierra Leone; and Mr. Michael Morris Lieberman, United States of America with support from Mrs. Gina Wood of the GIABA Secretariat.

5. Section IV of this report summarises the progress made to improve technical compliance. Section V contains the conclusion and a table illustrating Nigeria's current technical compliance ratings.

II FINDINGS OF THE MUTUAL EVALUATION REPORT

6. Nigeria's MER ratings[1] are as follows:

R.	Rating
1	PC(MER 2021)
2	PC(MER 2021)
3	PC(MER 2021)
4	C(MER 2021)
5	LC(MER 2021)
6	PC(MER 2021)
7	NC(MER 2021)
8	NC(MER 2021)
9	C(MER 2021)
10	LC(MER 2021)
11	PC(MER 2021)
12	PC(MER 2021)
13	C(MER 2021)
14	C(MER 2021)
15	PC(MER 2021)
16	LC(MER 2021)
17	LC(MER 2021)
18	LC(MER 2021)
19	PC(MER 2021)

R.	Rating
21	LC(MER 2021)
22	PC(MER 2021)
23	PC(MER 2021)
24	PC(MER 2021)
25	PC(MER 2021)
26	LC(MER 2021)
27	LC(MER 2021)
28	PC(MER 2021)
29	C(MER 2021)
30	C(MER 2021)
31	C(MER 2021)
32	PC(MER 2021)
33	PC(MER 2021)
34	PC(MER 2021)
35	LC(MER 2021)
36	LC(MER 2021)
37	LC(MER 2021)
38	LC(MER 2021)
39	LC(MER 2021)

[1] Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), and Non-Compliant (NC).

20	PC(MER 2021)	40	LC(MER 2021)

III OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. In keeping with the GIABA Mutual Evaluation Process and Procedures, this FUR considers progress made up until 13 May 2022. In line with the ME Procedures and FATF Methodology, the Experts' analysis has considered progress to address the deficiencies identified in the MER and the entirety (all criteria) of each Recommendation under review, noting that this is not detailed where the legal, institutional or operational framework is unchanged since the MER.

8. This section summarises the progress made by Nigeria to improve its technical compliance by:
a) addressing the technical compliance deficiencies identified in the MER, and

b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

4.1. Progress to address technical compliance deficiencies identified in the MER

9. Nigeria has made progress to address the technical compliance deficiencies identified in the MER in relation to R.3, 7, 11, 19 and 20. Because of this progress, Nigeria has been re-rated on these Recommendations.

10. GIABA welcomes the progress achieved by Nigeria in order to improve its technical compliance with R.6, R.12 and R.15. However, insufficient progress has been made to justify upgrades of the ratings of these Recommendations at this stage.

4.1.1 Recommendation 3 (originally rated PC)

11. In its 2nd round MER, Nigeria was rated PC with R.3, as conviction for ML required proof of the predicate offence, the scope of predicate offences resulting in proceeds was limited to offences committed in Nigeria and there was no requirement to infer the intentional element for ML from objective factual circumstances. Since the adoption of the MER, Nigeria has enacted the Money Laundering (Prevention and Prohibition) Act, 2022, Act No. 14 (MLPPA), to address the deficiencies identified in relation to R.3. The MLPPA repealed the Money Laundering (Prohibition) Act, 2011 (§29 (1), MLPPA). The MLPPA entered into force and effect on 12 May 2022[2] and applies throughout the Nigerian Federation.

12. **Criterion 3.1:** Nigeria outrightly prohibits ML (§18(1), MLPPA). The direct or indirect (1)(a) the concealment or disguise of the origin of; (b) conversion or transfer, (c) removal from jurisdiction, or (d) acquisition, use, retention, possession or control of any fund or property, where a person knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act constitute an ML offence (§18(2), MLPPA).

Nigeria also criminalises the concealment, removal from jurisdiction, transfers to nominees or otherwise, transfers to nominees or retention of the proceeds of an unlawful act on behalf of another person, where the person knows or reasonably ought to have known or suspected that other person to be engaged in an unlawful act or has benefited from an unlawful act, or (b) knows or reasonably ought to have known or suspected that any property either in whole or in part directly or indirectly represents

[2] Act is passed when the President assents to the Bill for the Act whether or not the Act then comes into force. Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force- (a) in the case of an enactment contained in an Act of the National Assembly, on the day when the Act is passed; (b) in any other case, on the day when the enactment is made. (See §2, Interpretation Act, Nigeria).

another person's proceeds of an unlawful act, acquires or uses that property or takes possession of it (§20, MLPPA).

These provisions cover participation in and facilitation of the ML offence by another person, as well as the physical and mental elements of the ML offence consistent with Article 3(1)(b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention. ML offences apply to any type of property, regardless of its nature, whether tangible or intangible, howsoever acquired.[3]

13. **Criterion 3.2:** The ML offence covers each of the "designated categories of offences" set out in the FATF Glossary, and any other criminal act specified in the MLPPA or any other law in Nigeria including any act, wherever committed as far as such act would be an unlawful act if committed in Nigeria (§18(6), MLPPA).

14. Criterion **3.3:** Nigeria has listed the FATF designated categories of offences and any other criminal act in the MLPPA or any other law in Nigeria wherever committed as ML predicates and does not apply a threshold approach (§18(6), MLPPA).

15. **Criterion 3.4:** According to Nigeria's definition of "funds", "property" and "virtual assets", the ML offence applies to all types of property, regardless of its value, that directly or indirectly represents the proceeds of crime. "Virtual assets" is defined in line with the definition set out in the FATF Glossary (§30, MLPPA).

16. **Criterion 3.5:** Section18(8) of the MLPPA stipulates that "[n]otwithstanding the provisions of subsection (6) of this section, it shall not be necessary to establish a specific unlawful act, or that a person was charged or convicted for an unlawful act, for the purpose of proving a money laundering offence under this Act. Section 18(6) of the MLPPA lists ML predicate offences.

17. **Criterion 3.6:** According to section 18(6) of the MLPPA, "unlawful act" includes the list of predicate offences and others specified in the MLPPA or other laws of Nigeria, wherever committed, if they are also considered as such in Nigeria. This provision enables Nigeria to extend the ML offence to foreign predicates.

18. **Criterion 3.7:** The provision on self-laundering remains as set out in the 2021 MER (see the 2021 MER, c.3.7).

19. **Criterion 3.8:** Section 18(9) of the MLPPA provides that *"**Knowledge, intent, purpose, belief or suspicion required as an element of money laundering under this Act may be inferred from objective factual circumstances***". However, the ML offences in section 18(2) and 20 of the MLPPA do not provide for "purpose" as an element to require proof for the ML offence.

20. **Criterion 3.9:** A natural person who commits the ML offence or an offence bordering on the retention of proceeds of an unlawful act is liable on conviction a term of imprisonment of not less than four to fourteen and a fine of not less than five times the value of the proceeds of the crime or to both (§18(3, and 20, MLPPA). Compared with the sanctions for other serious criminal offences in Nigeria (for example, advance fee fraud 7-20 years, corruption – 7 years, drug trafficking – life, TF – 20 years-life), the range of sanctions that can potentially be imposed on a natural person convicted of an ML offence is considered as proportionate and dissuasive.

21. **Criterion 3.10:** Legal persons are criminally liable for ML, with the ML act defined on the same basis as that committed by a natural person. Legal persons convicted of ML are liable to a fine of not

[3] Section 18(6), defining "unlawful act" and 30, MLPA, defining "funds", "proceeds of crime" and "property", "virtual assets"

less than five times the value of the funds or properties acquired based on the offence committed (§18(4), MLPPA). Repeated offences may lead to the withdrawal or revocation of licence (§,18(5), MLPPA).

The responsibility of legal persons may be based on the instigation, connivance or neglect on the part of a director, manager, secretary or other similar officer purporting to act in any such capacity (responsible person), both the legal and responsible person may be punished for the criminal offence (§22, MLPPA). Responsible officials of legal persons convicted of ML are subject to the same punishment as other natural persons while the court may order the winding up and forfeiture of all the assets and properties of the legal person to the Federal Government (§22, MLPPA).The sanctions are proportionate and dissuasive.

22. **Criterion 3.11:** The ancillary offences to ML offence include conspiracy with, aiding, abetting or counselling any other person to commit an offence; attempt to commit or being an accessory to an act or offence; incitement, procurement or inducement of other persons to commit an offence under the MLPPA. Ancillary offences attract the same punishment as the main ML offence (§21, MLPPA).

Weighting and conclusion

23. The MLPPA is in force and effect throughout the Federal Republic of Nigeria. The ML offence applies to all types of property, including virtual assets, regardless of value, that directly or indirectly represent the proceeds of crime. There are proportionate and dissuasive sanctions for natural persons convicted of the ML offence.

24. **Recommendation 3 is re-rated Compliant.**

4.1.2 Recommendation 6 (originally rated PC)

25. In its second round MER, Nigeria was rated PC due shortcomings regarding procedures or mechanisms for identifying targets for designation under UNSCRs 1267 and 1373; evidentiary standard for deciding whether to designate a person or entity; coverage of natural and legal persons subject to obligation to freeze; obligation to freeze funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities or funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities; the NFIU's powers to impose sanctions for non-compliance with TFS requirements other than for failure to report; legal basis for SCUML to implement and enforce TFS obligations against DNFBPs; clear mechanisms for communicating designations to reporting entities immediately upon taking designation action; requirement to report attempted transactions; de-list and unfreezing related to entities and other assets; guidelines to facilitate de-listing; and implementation of TF-TFS without delay. Nigeria has enacted a Terrorism (Prevention and Prohibition) Act, No. 15, 2022 (TPPA). The TPPA repeals the Terrorism (prevention) Act, No. 10, 2011 (§98, TPPA) and provides a single legal, regulatory and institutional framework for the detection, prevention, prohibition, prosecution and punishment of acts of terrorism, terrorist financing, proliferation and the financing of the proliferation of weapons of mass destruction in Nigeria and for related matters. Nigeria has also passed the Regulations for the Implementation of Targeted Financial Sanctions on Terrorism, Terrorism Financing and Other Related Measures, 2022 (TF.R). Both instruments entered into force and effect throughout the Federal Republic of Nigeria on 12 May, 2022.

26. **Criterion 6.1:** In relation to designations pursuant to United Nations Security Council Resolution (UNSCR) 1267/1989 (Al Qaida) and 1988 sanctions regimes (UN Sanctions Regimes), Nigeria has:

27. **Criterion 6.1(a):** The Attorney-General of the Federation (A-GF) is designated as the competent authority with the responsibility to propose a person, group or entity to the 1267/1989 or the 1988 Sanctions Committees for designation (§51, TPPA), based on the recommendations of the Nigerian Sanctions Committee (NSC).

28. **Criterion 6.1(b):** Section 9 of the TPPA states that [t]he Attorney-General shall, with the approval of the President, constitute the Nigerian Sanctions Committee (in this Act referred to as the "Sanctions Committee") which shall comprise-" the heads of Government Ministries, Departments and Agencies (MDAs) (§9, TPPA).[4] The A-GF can also incorporate any other person or institution into the Committee (§9, TPPA). The NSC established by the Terrorism Prevention (Freezing of International Terrorist Funds and Other Related Measures) Regulations, 2013 is still in place. The designation criteria is set out in the Third Schedule to the TPPA are in line with the relevant UNSCRs. The NSC does not have express powers to identify targets for designation. However, this is implicit in the Third Schedule to the TPPA and regulation 4(1) of the TF.R.

Section 5(1) of the TPPA states that "[t]he law enforcement and security agencies are responsible for gathering of intelligence for the purpose of (a) investigation of the offences provided for under this Act; and (b) the purpose of identifying targets for designation under relevant UNSCRs". The agencies can also investigate whether an entity has directly or indirectly committed an act, is about to commit an act or has been involved in committing an act of terrorism or TF under the TPPA or any other law (§5(3(a), TPPA).

29. **Criterion 6.1(c):** The proposal for designation is not conditional on the existence of a criminal proceedings against the target. It is based on "reasonable grounds to suspect" that the target meets the designation criteria set out in the Third Schedule of the TPPA (§51, TPPA).

30. **Criterion 6.1(d):** The TF.R prescribes measures to implement TFS obligations under the relevant UNSCRs, including UNSCR 1267 and successor resolutions (Regs1&2, TF.R). The A-GF signed the TF-R on 12 May 2022 which entered into force and effect the same day. According to regulation 9(1), the A-GF must, through the Ministry of Foreign Affairs, forward the proposed list of persons or entities for designations using the standard form to the relevant Sanctions Committee as provided in the Second Schedule. However, the forms in the Second Schedule are designed for listing individuals, entities and undertakings on the Nigeria Sanctions List which relates to UNSCR 1373. Further, section II of Part I.F. of the Form (Basis for Listing) states that *"in the event of the designation of this individual by the NSC, the information will be used for the development of the narrative summary of reasons to be published on the NSC's website"*. The corresponding part of the standard form for the 1267 Committee in relation to ISIL or Al-Qaida (including on the ISIL (Da'esh) and Al-Qaida Sanctions List places this obligation on Member States instead of Nigeria itself. In addition, Part V of the standard form for 1267 designations which deals with INTERPOL Cooperation is not covered. In the 2021 MER, where Nigeria was rated as having Met the requirement of this sub-criterion, Nigeria had explained that in practice, the Ministry of Foreign Affairs (MOFA) had followed the specified UN procedures in proposing Boko Haram and its leader for designation in 2014. Nigeria did not provide information to demonstrate that the authorities used the standard forms for listing, as adopted by the relevant Committee, to submit designation application prior to the passage of the TF.R. However, these are considered as minor shortcomings.

[4] The Attorney-General as Chairman; the Ministers responsible for Finance, Foreign Affairs and Interior; the National Security Adviser; the Director General, State Security Service; the Governor, Central Bank of Nigeria; the Inspector General of Police; the Executive Chairman, Economic and Financial Crimes Commission (EFCC); the Chairmen, Independent Corrupt Practices and other Related Offences Commission (ICPC), National Drug Law Enforcement Agency (NDLEA) & the Federal Inland Revenue Services; the Director-General, National Intelligence Agency; a representative of the Chief of Defence Staff; the Director of the Nigerian Financial Intelligence Unit as the Secretary; and any other relevant person or institution that the President may incorporate into the Sanctions Committee.

31. **Criterion 6.1(e):** The MER rated Nigeria as Mostly Met on this sub-criterion. However, as noted in c.6.1(d) above, the "Standard Form" prescribed in the Second Schedule to the TF.R relates to domestic designations by the NSC under UNSCR 1373, though it includes some of the required information. This will have an adverse impact on the information to be provided. No provision indicates whether Nigeria would require the relevant UN Sanctions Committee to disclose the country's status. However, these are considered as minor shortcomings.

32. **Criterion 6.2 (a):** The Attorney General is competent authority that has responsibility for designating persons or entities that meet the specific criteria for designating as set forth under UNSCR 1373 as put forward either on the country's own motion or based on the request of another country (§49(4), TPPA).

33. **Criterion 6.2 (b)** Section 10(e) of the TPPA empowers the NSC to recommend persons and entities who meet the designation criteria to the A-GF for designation. The NSC has the power to request and collect information or intelligence it deems necessary in the performance of its functions under the TPPA (§10(g), TPPA).

34. **Criterion 6.2 (c)** Nigeria has measures in place to make a prompt determination of whether a request meets the applicable threshold for designation under UNSCR 1373. When receiving requests from third countries, the A-GF is required to immediately convene the NSC and deliberate on the request and its supporting evidence (§49(4), TPPA).

35. **Criterion 6.2 (d)** The TPPA and TF.R now require the authorities to apply an evidentiary standard of proof of "reasonable basis" (reasonable evidence to support the request) or reasonable grounds in deciding whether to make a designation (§49(4)(b), TPPA & Regs.5(5)(b) and 7(a), TF-R).

For national designations proposed by the NSC, the A-GF is responsible for assessing whether the request is substantiated and meets the designation criteria specified in section 49(1) of the TPPA before giving effect to the request, upon approval by the President of the Federal Republic.

Designations are not conditional upon the existence of a criminal proceeding (Reg.7(b), TF-R). Consequently, it may be inferred that proposals are subject to the same conditions. However, requests based on instruments of the AU, ECOWAS and other organisations are not subject to verification for compliance with the designation criteria and the evidentiary standard which could lead to abuse of the freezing mechanisms. This is considered a minor shortcoming as it is envisaged that a significant number of designations would emanate from the UNSCRs.

36. **Criterion 6.2 (e)** Nigeria's framework relating to the implementation of UNSCR 1373 enables the A-GF to request a foreign country to designate a person, group or entity designated by Nigeria and provide relevant identifying information to support that request (§49(3), TPPA & reg 5 (4), TF.R). However, the A-GF is not required to provide specific information supporting the determination that the person or entity meets the relevant designation; the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity. Further, the provision does not refer to information to support the freezing mechanism. There are no cases in practice to further substantiate this criterion showing what information was provided.

37. **Criterion 6.3(a):** LEAs and security agencies are empowered to gather intelligence for the purpose of identifying targets for designation under the relevant UNSCRs; establish, maintain and secure communications, both domestic and international, to facilitate the rapid exchange of information concerning acts of terrorism and TF; and request, demand or obtain from any person, agency or organisation, information, including any report or data, that may be relevant to their functions under the TPPA (§5(1)(b), (2)(d) and (3)(h), TPPA). "Relevant UNSCRs" is defined to mean [UNSCRs] 1267

(1999) and 1373 (2001) and successor resolutions.

The NSC is empowered to collect or solicit information it deems necessary to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation(§10(g), TPPA & reg 4(2), TF.R).

38. **Criterion 6.3(b):** The NSC and its subsidiary bodies are required to operate *ex parte* against persons or entities being considered for designation (Reg.5(7), TF.R). Regulation 35 of the TF.R prohibits a person who during duties knows or is in possession of any information submitted or exchanged pursuant to the provisions of the Regulations, from disclosing the information, including the source, except for the purpose of implementing the Regulations.

39. **Criterion 6(4):** Nigeria has measures in place to implement TF-related TFS as described below:

> *In relation to UNSCR 1267 designations:* Section 52 of the TPPA provides that "[t]he designation of a person or entity by the United Nations Security Council or its Committees, in accordance with the United Nations Security Council Resolution 1267 and its successor resolutions shall (a) have immediate application, and (b) continue in effect until its expiration or revocation by the UN Security Council or its Committees". This means Nigeria has adopted an automatic application of UN designations and no further steps are required to trigger the implementation of freezing requirements and related actions.
>
> *In relation to UNSCR 1373 designations: Nigeria's legal framework does not provide timelines within which designations made pursuant to UNSCR 1373 take effect.* The authorities did not provide any practical cases to show the timeline for implementation in practice for UNCSR 1373 during the review period. Within the risk and context of Nigeria, the absence of a provision or information demonstrating implementation of UNSCR 1373 designations without delay is considered a moderate shortcoming.

40. **Criterion 6.5:** The NSC and sector regulators are responsible for implementing and enforcing TFS, in accordance with the following standards and procedures (reg.15(1)(b), TF.R):

41. **Criterion 6.5(a):** Nigeria now requires all natural and legal persons within the country, including FIs, DNFBPs and other entities in Nigeria to immediately identify and freeze without delay and without prior notice, all funds, assets and any other economic resources of the designated person or entity in their possession (§54(1), TPPA and Reg.12(1)(a), TF.R).

42. **Criterion 6.5(b):** The Regulations now includes all the categories of funds and other assets specified in this criterion. Specifically, the obligation to freeze applies to all funds, assets and any other economic resources (a) owned or connected to a designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; (b) wholly or jointly owned or controlled, directly or indirectly, by designated person or entities; (c) derived or generated from funds or other assets owned or controlled directly or indirectly by designees; (d) belonging to persons or entities acting on behalf of or at the direction of designees (§54(2), TPPA and Reg.13(2),TF.R).

43. **Criterion 6.5(c):** Nigerian nationals and other persons and entities in the jurisdiction are prohibited from directly or indirectly providing funds or other assets, economic resources, or financial or other related services to designated persons and entities; persons and entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons and entities unless licensed, authorised or notified in accordance with the relevant UNSCRs (Reg. 18, TF.R).

44. **Criterion 6.5(d):** The NSC website and the Federal Government Gazette constitute the mechanisms for communicating designations to FIs and DNFBPs. In relation to designations made under UNSCR 1267, section 53 of the TPPA requires the publication and periodic updates of information on the website of the NSC and circulation to the relevant sector regulators, FIs, DNFBPs and other entities without delay. In relation UNSCR 1373, sections 49(4)(c) and (5) of the TPPA require the NSC to disseminate the Nigeria Sanction List to relevant authorities on inclusion of the names of persons and entities designated pursuant to requests from foreign countries and in the framework of AU and ECOWAS instruments, respectively, for action. Further, the A-G is required to publish designations made pursuant to UNSCR 1373 in the Federal Government Gazette (§49(7), TPPA and reg.5(10), TF.R). The NSC is also required to establish a list referred to as the Nigeria Sanctions List where all designations made under section 49(2) of the TPPA are published and periodically updated (§50), TPPA). The TPPA and TF.R provide specific actions to be taken by reporting entities in furtherance of the publication/updates. However, the legal framework does not provide timelines for communicating designations made pursuant to UNSCR 1373.

It is the responsibility of all legal and natural persons in Nigeria to regularly check the website for changes. Reporting entities must subscribe to the NSC's alert system for timely updates (Reg.10(2), TF.R).

Section 54 of the TPPA provides clear guidance to FIs and other persons, including DNFBPs, that may be holding targeted funds or other assets, on their obligation in taking action following the publication of the Lists of designations. The NSC has also issued and published Guidelines to reporting entities for that purpose.

In view of Nigeria's risk profile, the absence of timelines for communicating designations made under UNSCR 1373 is considered a moderate shortcoming.

45. **Criterion 6.5(e):** FIs and DNFBPs are now required to immediately report to the NSC and file STRs to the NFIU in relation to any asset frozen or other actions taken in compliance with the prohibition requirements of relevant UNSCRs. The obligation to file STRs to the NFIU extends to transactions attempted by designated persons and entities (§54(1), TPPA & Reg.12(1)(a)-(d), TF.R).

46. **Criterion 6.5(f):** Regulation 12(2) of the TF.R stipulates that a person who, in good faith, freezes funds, denies disposal thereof, or refuses to provide financial services relating to listed individual, group or entity, or declined to perform any other obligation in compliance with the provisions of TPPA and this shall be exempted from any damages or claims, resulting from such action, including penal, civil, and/or administrative liability. Nigeria defines "third party" to include regional organisations (§40, TF.R).

47. **Criterion 6.6:** As described below, Nigeria has publicly known procedures available on the NSC website to de-list and unfreeze the funds or other assets of persons or entities which do not or no longer meet the criteria for designation:

48. **Criterion 6.6(a):** For de-listings related to designations made under the 1267/1989 and 1988 Sanctions regimes, designees may apply to the Sanctions Committee through the A-GF stating the reasons for the application with supporting arguments or evidence regarding the basis for the listing or change in circumstances resulting in the listing (Regulation 11(1) of the TFS on TF. R). However, reference to "may" regarding the provision of supporting information by a requesting person or entity makes this action optional for the petitioner. Regulation 40 of the TF.R defines "may" to include "shall" for the purposes of implementation of UNSCR 1267/1989. This definition excludes designations made by the 1988 Committee. This is however, considered a minor shortcoming.

49. **Criterion 6.6(b):** The TPPA, TF.R and the NSC constitute the legal authorities and procedures

or mechanisms to unfreeze the funds or other assets of persons and entities designated pursuant to UNSCR 1373, that no longer meet the criteria for designation (Regs. 11(1) and (2), TF.R).

50. **Criterion 6.6(c):** A person or entity aggrieved by the A-GF's refusal to grant the revocation order can apply to the Court for review of this decision within 30 days of the refusal (§55(4), TF.R). This is preceded by an application by a person, group or entity designated under section 49 of the TPPA (which deals with UNSCR 1373 designations) to apply to the A-GF in writing for a revocation of the order (§55(1) of the TPPA). The A-GF may consult the NSC and on confirmation that the applicant no longer meets the designation criteria, revoke the designation order and publish the notice of revocation in the Federal Government Gazette and cause the name and other details of the revoked designation to be removed from the NSC. The A-GF may also refuse the application for revocation (reg.55(2), TF.R). The A-GF must, within 60 days of receiving the application for revocation, inform the applicant of the decision to revoke or to uphold the order (reg.55(2), TF.R).

51. **Criterion 6.6(d):** Regarding designations under 1988, designated persons and entities are informed of the listing, its reasons and legal consequences, their rights of due process and the availability of de–listing procedures including the UN Focal Point mechanism (reg.28(3), TF.R). Persons or entities seeking de-listing must apply through the A-GF to the UN Sanctions Committee (reg.11(1), TF.R).

52. **Criterion 6.6(e):** Regarding designations on the Al-Qaida Sanctions List, designated persons and entities are to be informed of the listing, its reasons and legal consequences, their rights of due process and the availability of de–listing procedures including the UN Focal Point mechanism (reg.28(3), TF.R). Persons or entities seeking de-listing must apply through the A-GF to the UN Sanctions Committee (reg.11(1), TF.R).

53. **Criterion 6.6(f):** Persons whose funds or other assets are frozen as a result of similarity in names or as a result of any other error can apply to the NSC to unfreeze the funds. The NSC must determine the application not later than 15 days from the date of receipt of the application, and upon verification that the funds and other economic resources are not frozen in error, direct a person or entity in custody of the frozen funds to unfreeze immediately, and inform the applicant and the UNSC of the determination and unfreezing action (reg.23, TF.R).

54. **Criterion 6.6(g):** According to information provided, the Secretariat of the Nigeria Sanctions Committee shall upon publication or an update to the United Nations Consolidated List and Nigerian List of designated persons or entities communicate such update to Financial Institutions, Designated Non-financial Businesses & Professions and other entities through an electronic alert (reg. 10, TFR). Financial Institutions, Designated Non-financial Businesses & Professions and other entities are also required to subscribe to the alert system. However, regulation 10 of the TF.R falls under the heading *"[p]rocedure for communicating designations to Financial Institutions, Designated Non-financial Businesses & Professions and Other Entities*". Also, section 55(2)(a) of the TPPA which requires the A-GF to publish the notice of revocation related to national designations in the Federal Government Gazette does not cover unfreezing of funds matters. Finally, the Guidance on Implementation of TFS on TF & PF does not cover obligations regarding de-listing or unfreezing actions.

55. **Criterion 6.7:** Nigeria authorises access to frozen funds and other assets to settle some important expenses, including legal services, bank and related charges (regs.20 and 21, TF.R). Access to funds and other assets frozen pursuant to UNSCR 1267 designations must be approved by the relevant Sanctions Committee (reg.21, TF.R).

Access to frozen funds and other assets under UNSCR 1373 must be authorised by the NSC (reg. 20(2) and (3) of the TF.R). Notification to the UN Security Council and approval from the UN Sanctions Committee are also required (reg.20(4)-(6), TF.R).

Weighting and conclusion

56. Nigeria has made some progress in its technical compliance with Recommendation 6. However, shortcomings are identified in relation to the implementation of TF-TFS without delay; verification of requests based on AU and ECOWAS instruments for compliance with designation criteria and evidentiary standards; and the guidance on obligations regarding de-listing or unfreezing actions. Within the risk and context of Nigeria, these are moderate shortcomings.

57. **Recommendation 6 remains rated Partially Compliant.**

4.1.3 Recommendation 7(originally rated NC)

58. In its 2nd round MER Nigeria was rated NC on R.7 due to the absence of legislation or sufficient measures and procedures to implement TFS to comply with UNSCR relating to the prevention, suppression and disruption of the proliferation of WMD and its financing.

59. Nigeria has adopted legal and institutional measures and mechanisms to implement PF-related TFS without delay. The NSC is responsible for implementing and enforcing TFS related to proliferation financing (§10(f), TPPA).

60. **Criterion 7.1:** Nigeria implements TFS related to PF pursuant to the TPPA and the Regulation for the Implementation of Targeted Financial Sanctions on Proliferation Financing (UNSCR 1718(2006) and successor resolutions on DPRK, and UNSCR 2231(2015) on Iran;) (PF.R) which entered into force and effect on 12 May, 2022. Designation of any person or entity by the UN Security Council or relevant Committee related to PF has immediate application in Nigeria and continues in effect until the expiration or revocation by the UN Security Council or its Committees (§60, TPPA).

61. **Criterion 7.2:** The Terrorism (Prevention and Prohibition) Act, 2022 (TPPA) and the Regulation for the Implementation of Targeted Financial Sanctions on Proliferation Financing, 2022 (PF.R) which entered into force and effect on 12 May, 2022 establish the legal authority and designate the NSC as responsible for implementing and enforcing TFS related to proliferation financing (§10(f), TPPA).

62. **Criterion 7.2(a):** Freezing obligations related to designated persons and entities concerning proliferation financing TFS apply to all natural and legal persons, including FIs and DNFBPs in Nigeria, which must be implemented against funds and other assets upon publication of the Consolidated List on the NSC website and notification by regulators to reporting entities without delay and without prior notice to designated persons and entities (§61(1) and (4), TPPA and reg.7(1), PF.R).

63. **Criterion 7.2(b):** The freezing obligation extends to all funds and other property covered by this sub-criterion (§61(2), TPPA).

64. **Criterion 7.2(c):** Natural and legal persons within the territories of Nigeria are prohibited from making funds or economic resources available directly or indirectly to designated persons and entities unless licensed, authorised or otherwise notified in accordance with the relevant UNSCRs (reg.13(1), PF.R). The PF.R provides for specific circumstances under which funds or other assets can be made available to designated persons and entities (regs.16(5) and (6), PF.R).

65. **Criterion 7.2(d):** The website of the NSC, to which reporting entities are required to subscribe to receive automated email notifications, and sector regulators are the mechanisms for communicating designations to the financial sector and DNFBPs upon taking action. The NSC website hosts a direct link to the website of the UN Security Council, and Guidelines are also available at the NSC website. However, there is no evidence that new designations were published on the NSC website or any practical

cases to show the timeline for implementation in practice for UNCSR 1718 and 2231. Within the risk and context of Nigeria, this is considered a moderate shortcoming.

66. **Criterion 7.2(e):** Reporting entities are required to report any assets frozen or actions taken to the NSC, NFIU and regulators (§61(1) and (4)(a) &(b), and reg. 7(b)-(d), PF-R). The obligation to report extends to attempted transactions (reg.7(1)(b), PF.R).

67. **Criterion 7.2(f):** Regulation 7(2) of the TFS on PF.R exempts a person who, in good faith, freezes funds, denies disposal thereof, or refuses to provide financial services relating to listed individual, group or entity, or declined to perform any other obligation in compliance with the provisions of Terrorism (Preventions and Prohibition) Act, 2022 and the PF.R from any damages or claims, resulting from such actions, including penal, civil, and/or administrative liability.

68. **Criterion 7.3:** Sector regulators are empowered to monitor compliance of reporting entities with freezing obligations. They are to use their powers under relevant laws or enactments to monitor the policies, procedures and actions of reporting entities and other entities under their authority to ensure compliance with freezing requirements under section 61 of the TPPA and take appropriate enforcement action and apply such sanctions as are appropriate in the event of non-compliance with any of the requirements under the mentioned section (61(7), TPPA). Specific monitoring, penalties and sanctions frameworks are provided (reg.10(b), (c) and (e) and reg.28, PF.R). Sector can impose penalties for violation of the PF.R. The penalties include administrative fines of not less than One Million Naira (approximately USD2,288) and Twenty-Five Million Naira (approximately USD 5,720) for each day of violation; suspension of the violator from working in the sector for a period to be determined by the regulator; specific measures against high-ranking officials and owners of the entities proven to be responsible for the violation; suspension/restriction of professional activity, cancellation of licence. Where there are repeated violations of the PF.R by any institution, entity or body corporate, the AG-F must on recommendation of the NSC apply sanctions as may be considered appropriate in furtherance of the TPPA and MLPPA.

69. **Criterion 7.4:** Nigeria now has publicly known procedures to submit de-listing requests to the Security Council in case of designate persons and entities that, in the view of the country, do not or no longer meet the criteria for designation. These include:

70. **Criterion 7.4(a):** Petitioners are required to submit their applications through the Attorney-General with a copy deposited to the NSC Secretariat (reg. 6, PF.R). Part 1 of the Guidelines on Application for de-listing from the UN Consolidated List (Terrorism, TF and PF) requires an affected person or entity to submit a request for de-listing to the Chairman of the NSC (the A-GF) through the Secretariat for onward transmission to the United Nations Security Council.

71. **Criterion 7.4(b):** Where funds or other economic resources were frozen due to similarity in names or any other error, the person or entity affected may apply to the NSC to unfreeze the funds (reg. 18, PF.R). The NSC is required to decide on the request within 15 working days from the date of receipt of the application and direct the unfreezing of funds or other assets upon verification that the funds or other assets economic resources were frozen in error. This must be followed by information on the decision to the applicant and the UN Security Council (reg.18(2-4), PF.R).

72. **Criterion 7.4(c):** Nigeria now has specific provisions for authorising access to funds or other assets, where the NSC has determined that the exemption conditions set out in UNSCRs 1718 and 2231 are met, and in accordance with the procedures set out in those resolutions. Payment to designated persons or entities is prohibited unless authorised by NSC with the prior approval by the Security Council (for Iran) and the 1718 Sanctions Committee (for the DPRK) (reg.15, PF.R). The exemptions cover the amounts required to meet expenditures on food, medical needs and such other general expenses as the Nigeria Sanctions Committee may approve, from time to time; reasonable professional fees and

settlement of expenses, including legal services, bank and related charges; or any other exceptional expenses that the NSC believes are permitted expenses in accordance with procedures under UNSCR 1718(2006) and 2231(2015). The NSC is responsible for receiving and approving applications for the utilisation of funds or other economic resources.

73. **Criterion 7.4(d):** The NSC Secretariat is required to communicate updates to the published UN Consolidated List of designated persons or entities to reporting and other entities through an alert system. Regulation 5(1) of the PF.R appears under the heading *Procedure for communicating designations to Financial Institutions, Designated Non-financial Businesses & Professions and Other Entities* and seems to relate to designations instead of de-listings. This provision is linked to section 60(2) of the TPPA which stipulates that any information on the designation of person[s] and entities referred to in subsection (1) of the TPPA shall without delay be published in the NSC websites and periodically updated in the manner prescribed in the regulations made in accordance with the TPPA. The updates must be circulated to the relevant sector regulators, financial institutions, DNFBPs and other entities. The unfreezing provisions in the PF.R (i.e.. Sec 18) are limited to situations where funds or other economic resources have been frozen as a result of similarity in names or any other error. In this regard, it is concluded that Nigeria's legal framework or mechanism does not cover communication of all PF-related de-listings and unfreezing to its FIs and other persons or entities, including DNFBPs.

Nigeria did not provide information on disseminations made within the reporting period to enable a determination whether such disseminations are made immediately upon taking the de-listing action.

74. **Criterion 7.5:** Regarding contracts, agreements or obligations that arose prior to the date on which the account became subject to TFS:

75. **Criterion 7.5(a):** Obliged persons and entities are required to receive and credit any sums of monies or funds accruing to the frozen funds, including interests or other earnings due on the account, payments due under contracts, agreements or obligations that were concluded or arose before an account became frozen and file a report to the NFIU. The added funds are subject to freezing measures. In the absence of an account, the obliged entity must inform the A-GF for direction, including creating an *escrow* account in appropriate cases (reg.17, PF.R).

76. **Criterion 7.5(b):** Regulation 19 of the PF.R provides that freezing action does not prevent a designated person or entity from making any payment due under a contract entered into prior to the listing of the person or entity, provided the NSC has determined that (i) the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in UNSCR 2231 and any future successor resolutions; (ii) the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 of Annex B to UNSCR 2231. The NSC must notify the UNSC of its intention to make, receive payment or authorise the unfreezing of funds, other financial assets, etc, through the Ministry of Foreign Affairs and within ten working days prior to such authorisation. The provision in part (ii) does not refer to any future successor resolutions.

Weighting and conclusion

77. Nigeria has adopted legal and institutional measures and mechanisms to implement PF-related TFS. However, shortcomings are noted in relation to framework or mechanism for communicating de-listings and unfreezing to FIs and other persons or entities, including DNFBPs; addition of interests or other earnings due on account frozen pursuant to UNSCRs 1718 and 2231. These shortcomings are considered minor in Nigeria's implementation of UNSCRs 1718 and 2231.

78. **Recommendation 7 is re-rated Largely Compliant.**

4.1.4 Recommendation 11 (originally rated PC)

79. In its 2nd round MER Nigeria was rated PC on R.11. The shortcomings related to the results of any analysis undertaken, absence of requirement for some FIs to maintain transaction records sufficient to permit the reconstruction of individual transaction, specific timeframe for FIs to make records available to domestic competent authorities, and the scope of competent authorities that can request transaction records kept by FIs.

80. **Criterion 11.1:** All FIs, including insurance companies, are required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (§8(1)(a), MLPPA).

81. **Criterion 11.2:** FIs are required to retain records obtained during the application of customer due diligence (CDD) measures under section 4 of the MLPPA, including account files and results of any analysis undertaken (§8(1)(b), MLPPA). Under section 4(1) of the MLPPA, CDD measures comprise the identification and verification of the identity of customers and beneficial owner; ongoing monitoring of the business relationship; and scrutiny of transactions undertaken during the business relationship. The period of retention specified in section 8(1)(a) of the MLPPA complies with the minimum required by R.11.

82. **Criterion 11.3:** Section 8(2)(a) of the MLPPA requires that records must be sufficient to permit individual transactions to be readily reconstructed at any time by the competent authorities. For FIs supervised by the CBN, the components of transactions records include customer and beneficial ownership records obtained through CDD measures (e.g. copies of records of official identification documents like passports, identity cards, drivers' licenses or similar documents) and beneficiary's names, addresses or other identifying information normally recorded by the intermediary; (b) nature and date of the transaction; (c) type and amount of currency involved; (d) type and identifying number of any account involved in the transaction; (e) results of any analysis (e.g. inquiries to establish the background and purpose of complex unusual large transactions); and (f) business correspondence (paper and electronic) (reg. 35(2)). For insurance companies, the records of transaction must include the risk profile of each customer or beneficial owner and the data obtained through the CDD process and business correspondences 25(2), NAICOMR), while CMOs are required to maintain records of the identification data, risk profile of each customer or beneficial owner, account files, CDD information and business correspondence, and results of any analysis undertaken(reg. 21(1)(b), SECR).

83. **Criterion 11.4:** FIs are now required to make records swiftly available to an expanded range of domestic authorities, no later than 48 hours (8(2)(b) of the MLPPA). Accordingly, nothing prevents competent authorities from receiving CDD information.

Weighting and conclusion

84. Nigeria has taken legislative steps to address the shortcomings identified in relation to R.11. FIs are required to keep all records obtained through CDD measures (for both domestic and international transactions) for at least five years and make the same swiftly available to domestic competent authorities.

85. **Recommendation 11 is re-rated Compliant.**

4.1.5 Recommendation 12 (originally rated PC)

86. In its 2nd round MER Nigeria was rated PC on R.12 due to shortcomings regarding the timing for putting in place the required risk management systems, specific provisions for the individual types of PEPs and guide to FIs on the treatment of persons who are no longer holding prominent public

functions, requirements for insurance companies to inform senior management before payout in cases where higher risks are identified and the filing STRs.

87. **Criterion 12.1:** In Nigeria, foreign PEPs include individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or Governor, senior politicians, senior government, judicial or military officials, senior executives of State-owned corporations and important party officials (§30, MLPPA). In relation to foreign politically exposed persons (PEPs), FIs are required to:

88. **Criterion 12.1(a):** put in place appropriate risk management systems and procedures to determine whether a customer or the beneficial owner of a customer is a PEP (§ 4(7), MLPPA). However, FIs are not required to implement this measure in addition to performing those required under Recommendation 10.

89. **Criterion 12.1(b):** obtain senior management approval before establishing (or continuing, for existing customers) such business relationships (§4(8)4(a), MLPPA).

90. **Criterion 12.1(c):** take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs (§4(8)(b), MLPPA).

91. **Criterion 12.1(d):** conduct enhanced ongoing monitoring on that relationship (§4(8)(c), MLPPA).

92. **Criterion 12.2:** Domestic PEPs and persons holding a significant positions in an international organisation include, in the case of the former, Heads of State or of Government, senior politicians, senior government, judicial or military officials, senior executives of State-owned corporations and important political party officials; and in the case of the latter, members of senior management such as directors, deputy directors, and members of the board or equivalent functions … other than middle ranking or more junior individuals in these categories (§30, MLPPA).

93. For these two categories of PEPs, FIs are required to:

> **Criterion 12.2(a):** put in place appropriate risk management systems and procedures to determine whether a customer or the beneficial owner of a customer is a politically exposed person (§4(7), MLPPA). FIs are not required to implement this measure in addition to performing those required under Recommendation 10.
>
> **Criterion 12.2(b):** in cases when there is higher risk business relationship with the customer, adopt the measures in criterion 12.1 (b) to (d) (§4(9), MLPPA).

94. **Criterion 12.3:** Except for persons holding a significant position in an international organisation, the definition of PEPs in section 30 of the MLPPA does not cover close associates or family members. On the other hand, the sector Regulations define PEPs to include family members and close associates (regs. 29(1), CBNR; 97, SECR; and 43, NAICOMR). The sector Regulations are considered as other enforceable means because they set out or underpin the requirements addressing the definition of foreign PEPs, and provide clearly stated requirements which are understood as such. The Regulations were issued by the Attorney-General in exercise of powers conferred by section 28 of the MLPPA for the efficient implementation of the MLPPA. However, the provisions of the Regulations do not operate to override the provisions of the MLPPA. This is because, according to section 19(1) of the Interpretation Act of Nigeria, *"[a]n expression used in a subsidiary instrument has the same meaning as in the Act conferring power to make the instrument".* This limitation restricts the scope of family members and close associates of PEPs to which the measures in c.12.1 and c.12.2 must be applied. In addition, there are no working definitions or examples of close associates and family members that will

enable FIs to implement a wide approach covering all individual situations presenting specific risks due to their links with an international organisations PEP, e.g. brothers, sisters, cousins, uncles, aunts, grandparents, grandchildren or persons closely associated with them other than through legal or business ties.

95. **Criterion 12.4:** In relation to life insurance policies, insurance companies are required to, before the time of payout, take reasonable measures to determine whether the beneficiaries and/or where required, the beneficial owner of the beneficiary, are PEPs (reg.9(12(a), NAICOMR). Where higher risks are identified, insurance companies must inform management before payout of the proceeds of life insurance policy and consider making a suspicious transaction report (reg.9(12)(b), NAICOMR). However, the deficiencies highlighted under criteria 12.1 - 12.3 have an adverse impact on the conclusion for this criterion.

Weighting and conclusion

96. Nigeria has taken steps to address the deficiency identified in relation to R.12. Progress is noted in relation to obtaining senior management approval, establishment of the source of wealth and application of enhanced monitoring measures to all categories of PEPs; extension of PEP requirements to family members and close associates of international organisation PEPs; payment of life insurance proceeds and related information to management and STR obligation. Shortcomings are noted in relation to risk management systems and the scope of family members and close associates to which relevant measures must be applied (national and foreign PEPs). Given the risk and context of Nigeria, a higher weighting has been given to the shortcomings identified under c. 12.3.

97. **Recommendation 12 remains rated Partially Compliant.**

4.1.6 Recommendation 19 (originally rated PC)

98. In its 2nd round MER Nigeria was rated PC on R.19 because Nigeria lacked adequate measures to apply relevant enhanced due diligence (EDD) measures and countermeasures to business relationships and transactions with natural and legal persons from higher-risk countries, whether called for by the FATF or independently.

99. **Criterion 19.1:** Sector Regulations require covered FIs to apply EDD measures proportionate to the risks, to business relationships and transactions with natural or legal persons (including financial institutions) from countries for which this is called for by the FATF (regs. 34(1), CBNR, 12(3) SECR and 29(9), NAICOMR). However, except for regulation 12(3) of NAICOMR, the other Regulations do not set out examples of the types of measures that the FIs could implement in relation to higher-risk countries for which this is called for by the FATF. This means that examples of EDD measures do not exist for banks, traders in foreign exchange, primary mortgage banks, microfinance banks, development finance institutions, finance companies, money or value transfer service (MVTS) and CMOs. Considering the materiality of these sectors, the shortcoming is however considered a minor deficiency as the legal requirement for FIs to apply EDD measures proportionate to the risks exists.

100. **Criterion 19.2:** FIs can apply countermeasures when called upon to do so by the FATF and independently of any call by the FATF to do so against "high-risk countries" (regs.32(2), CBNR); 12(4)(a), SECR; 29(10(2), NAICOMR). Sector Regulations define "high risk countries" to mean countries which are subject to a call for application of countermeasures by the FATF and countries identified by financial supervisors or other competent authorities as having strategic deficiencies in their AML/CFT regimes and/or posing a risk to the AML/CFT regime of Nigeria (regs.34(2)(B), CBNR; 12(4)(c), SECR; 30(10)(v), NAICOMR). The countermeasures that all FIs may apply include, limiting business relationships or financial transactions with the high-risk countries or with persons located in the country concerned; reviewing and amending or, if necessary, terminating the agreement or arrangement governing the correspondent banking or business relationships with FIs or other

counterpart institutions in the country concerned; conducting enhanced external audit, by increasing the intensity and frequency, for branches and subsidiaries of the reporting entity located in the country concerned; prohibiting reporting entities from relying on third parties located in the country concerned to conduct elements of the due diligence process; and conducting any other measures as may be specified by the supervisors.

101. **Criterion 19.3:** Section 22 of NFIUA mandates the NFIU to advise supervisory authorities on compliance with the FATF's countermeasures. Regulators (CBN, SEC, and NAICOM) issue circulars and other guidelines from time to time whenever there are weaknesses in the AML/CFT systems of other countries, including a declaration by the FATF.

Weighting and Conclusion

102. Nigeria has taken legislative measures to address the shortcomings identified in relation to R.19. However, except for insurance companies, minor shortcomings exist in relation to examples of the types of measures that EDD could include.

103. **Recommendation 19 is re-rated Largely Compliant.**

4.1.7 Recommendation 20 (originally rated PC)

104. In its 2nd round MER Nigeria was rated PC on R.20 due to shortcomings regarding the requirement for FIs to report a transaction on suspicion or reasonable grounds to suspect that funds are the proceeds of a criminal activity, and reference to criminal acts.

105. Nigeria has taken appropriate steps to address the shortcomings in relation to the requirement for FIs to report suspicious transactions to the FIU.

106. **Criterion 20.1:** A transaction that involves a frequency which is unjustifiable, is surrounded by conditions of unusual or unjustified complexity, appears to have no economic justification or lawful objective, is inconsistent with the known pattern of an account or business relationship, or in the opinion of an FI involves the proceeds of a criminal activity, unlawful act, ML or TF, should be deemed as suspicious and the FI involved in the transaction must report to the FIU (§7(1), MLPPA). An FI is required to within 24 hours after the transaction draw up a written report with all the relevant information in section 7(1), including reasons and identity of the principal, and where applicable, the beneficiary or beneficiaries; take appropriate action to prevent the laundering of proceeds of a crime or an illegal act; and report the suspicious transaction to the Unit (§7(2), MLPPA). "Suspicious" is defined to mean a matter which is beyond mere speculations but based on [a] reasonable foundation (§30, MLPPA)."Proceeds" means property derived from or obtained, directly or indirectly through the conduct of an unlawful act" (§30, MLPPA), while "unlawful act", refers to the predicate offences of ML(§18(6), MLPPA).

107. **Criterion 20.2:** (as per the MER). The analysis in the MER and available material (the MLPPA) support the criterion rating.

Weighting and conclusion

108. Nigeria has addressed the gaps related to the obligation for FIs to file reports on suspicious transaction linked to the proceeds of criminal activity. The MLPPA maintained the existing provision for c.20.2 which has enabled Nigeria to achieve full compliance with Recommendation 20.

109. **Recommendation 20 is re-rated Compliant.**

4.2. Progress on Recommendations which have changed since the MER

4.2.1 Recommendation 15 (originally rated Partially Compliant)

110. Since the on-site visit of Nigeria for its MER in September/October 2019, the FATF amended R.15. This section considers Nigeria's compliance with the new requirements.

111. **Criterion 15.1:** FIs to identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products in accordance with the requirements specified by the regulatory authorities (§13(1) of the MLPPA). Sectorial regulations require FIs to conduct similar exercises, as well as the identification and assessment of PF risks (§ 13(1), MLPPA reg.31(1), CBNR; 19(3)(i), SECR; and 27(4), NAICOMR). At the country/national level, Nigeria has initiated steps to identify and assess the ML/TF risks arising in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for new and pre-existing products. The National Inherent Risk Assessment (NIRA) report is yet to be finalised and was therefore not ready at the deadline for submitting the information for re-rating.

112. **Criterion 15.2(a):** FIs are required to identify and assess the ML and TF risk that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and existing products prior to the launch or use of the new products, business practices and technologies (§13(2)(a), MLPPA). The pre-launch or use assessment requirement in sector Regulations extend to PF (reg.19(3)(ii), SECR; 31(2), CBNR and 27(4), NAICOMR).

113. **Criterion 15.2(b):** FIs are required to take appropriate measures to manage and mitigate the identified risks related to the products, practices and technologies (§13(2), MLPPA, reg.19(3)(ii), SECR; 31(2), CBNR and 27(4), NAICOMR).

114. **Criterion 15.3 (a):** As part of the NIRA, Nigeria has taken steps to identify and assess the ML/TF risks emerging from VAs and VASPs activities. The NIRA report (NIRA-R) is not finalised and was therefore not ready at the deadline date for submitting the information for re-rating.

115. **Criterion 15.3 (b):** The NIRA-R is not finalised as at the reporting date and the National AML/CFT Strategy & Action Plan has not been updated with the results of the NIRA. Consequently, Nigeria is yet to apply a risk-based approach to ensure that measures to prevent or mitigate ML/TF/PF are commensurate with the risks identified.

116. **Criterion 15.3 (c):** Regulation 97 of SECR defines VASPs consistent with the FATF definition. They are also defined as Capital Market Operators (CMOs) within the meaning of section 315 of the Investment and Securities Act, 2007 (ISA). VASPs are required to comply with the requirements applicable to all CMOs under the MLPPA and the SECR (Reg.15(1), SECR). The classification of VASPs as CMOs means, in Nigeria's context, VASPs are permitted to operate in the country with relevant FATF Recommendations applicable. Thus, VASPs are required to take appropriate steps to identify, assess and understand their ML/TF/PF risks for customers, delivery channels countries or geographic areas and products and services and based on the understanding of their risk apply a risk-based approach to ensure that measures to prevent or mitigate ML/TF/PF are commensurate with the risks identified (reg. 9(10)(2),SECR).

117. **Criterion 15.4(a):** Nigeria has issued Rules on Issuance, Offering Platforms and Custody of Digital Assets (May 2022) to, among other things, provide for the registration mechanism for VASPs.

Part D (1.2) of the rules requires a VASP to be a legal person and Part D (4.0) requires VASPs to register with the SEC.

118. **Criterion 15.4(b):** Part D (4.0) of the SEC Rules (Requirement for Registration of VASPs) provides measures to prevent criminals from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in a VASP. However, the provision does not cover the associates of potential VASPs or VASPs.

119. **Criterion 15.5:** SEC can enter and seal up the premises of persons carrying out illegal capital market operations. SEC also relies on its whistle blowing policy and a hotline for receiving information from the public on natural or legal persons that carry out VASP activities without registration and applies appropriate sanctions. The SEC Police Unit also carries out surveillance to identify and sanction illegal operators. However, the cases provided as evidence to support this assertion relate to unregistered fund managers, unauthorised sale of shares, forgery/fraud/impersonation, collective investment schemes, issuance of dud cheques and investment schemes.

120. **Criterion 15.6(a):** Pursuant to the designation of VASPs as CMOs, SEC is the supervisor for VASPs and for ensuring compliance with the AML/CFT requirements. However, there is no information demonstrating adequate regulation and risk-based supervision or monitoring by SEC, including systems for ensuring the compliance of VASPs with national AML/CFT requirements.

121. **Criterion 15.6(b):** The SEC is the apex regulatory organisation for the capital market and has powers to supervise and monitor the compliance of VASPs which are the same as available for CMOs. It has the power to regulate investments and securities business as defined in section 13 of the ISA. The SEC can conduct routine and special inspection of CMOs (including VASPs) involved in the administration, management or custody of funds for or on behalf of clients (§§45(1) & 45(9), ISA), compel the production of information (§§13(u) and 45(3)(c), ISA). Also, under section 13(u) of the ISA, SEC can levy fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of the ISA. Section 36(4)(a) of the ISA further empowers the SEC to revoke the registration of either or both a body corporate and securities exchange, capital trade point or self-regulatory organisation that, after the expiration of a second period of suspension of trading in the securities, still refuses to comply with directives of the Commission.

122. **Criterion 15.7:** The SEC has issued Rules on Issuance, Offering Platforms and Custody of Digital Assets to guide VASPs through the registration process. However, the Rules are limited to their registration processes and competent authorities and/or supervisors have not established any guidelines and/or provided feedback, to assist VASPs in applying national measures to combat ML/TF, and, in particular, in detecting and reporting suspicious transactions.

123. **Criterion 15.8 (a):** Sanctions in the MLPPA and the TPPA are applicable to the VASPs. Under the MLPPA, the failure to implement preventive measures is an offence (§19(1)(f)) and punishable on conviction to a fine of not less than N 10,000,000 (USD 23,855.00) or imprisonment for a term of not less than two years or to both, in the case of individuals (including directors and employees) and N25,000,000 (USD 59,638.00) in the case of a body corporate and (§19(2)(b)). Keeping anonymous accounts or accounts in obviously fictitious names is punishable, in the case of an individual, to a term of imprisonment from two to five years, and in the case of an FI or a corporate body, a fine from N10,000,000 (USD 23,855.00). Although sector regulations have similar provisions as the MLPPA, the minimum penalty in the SECR is far lower than those in the MLPPA.

As regards the TPPA, this law does not provide sanctions for non-compliance with freezing requirements. However, it provides that non-compliance with any regulations made under the TPPA is an offence punishable on conviction to such administrative or other penalties, as may be prescribed in

the regulations (§96, TPPA). Consequently, under Regulation 37(1) of the TF.R and Regulation 28(1) of the P.FR, violation of freezing requirements attract administrative penalties of not less than NGN 1,000,000 (USD 2,294.00) and NGN 25,000,000 (USD 57.35) for each day of violation; ban on the violator from working in the sector related to the violation for the period determined by the Sector Regulator; constraint of the powers of the Board members, supervisory or executive management members, managers or owners proven to be responsible of the violation including the appointment of temporary inspector; suspension of managers, board members and supervisory and executive management members proven to be responsible of the violation for a period to be determined by the supervisory authority or request for their removal; suspend or restriction of the activity or the profession for a period to be determined by the supervisory authority; and cancellation of licence.

124. **Criterion 15.8 (b):** Sanctions are applicable to directors, senior management, managers or employees of CMOs (§§14 and 19, MLPPA, 2022 and Reg. 96(5), SECR). A Director or an employee under the MLPPA, 2022 is liable on conviction to a fine of at least N10,000,000 (USD 22,880) or imprisonment for a term of at least two years; and to a fine of N10,000,000 or imprisonment for a term of at least three years or to both, in the case of individual and N25,000,000 in the case of a body corporate for various violations.

125. **Criterion 15.9(a):** VASPs must comply with the requirements applicable to all CMOs under the MLPPA and the SECR (reg. 15(1), SECR). These cover the requirements set out in Recommendation 10 to 21. For VASPs, an occasional transaction for purposes of Regulation 9(b) of these Regulations is one or more occasional transactions when the total value of the transactions exceeds the equivalent of $1,000 (reg. 15(2), SECR). Regulation 9(1)(b) of the SECR requires CMOs to undertake CDD measures when carrying out occasional transactions above the sum of $1,000 or its equivalent or such other thresholds as may be determined by SEC from time to time, subject to the MLPPA and TPPA. Nigeria has not requested for re-rating for R.10, 13, 14, 17, 18 and 21. Even though Nigeria's legal framework is fairly compliant with Recommendation 10 to 21, the shortcomings noted under these Recommendations also have an adverse impact on this requirement.

126. **Criterion 15.9(b):** All virtual asset transfers are to be treated as cross-border transfers and subject to the requirements for cross-border wire transfers (reg. 15(3), SECR). CMOs (by extension, VASPs) are required to obtain and hold full originator and beneficiary information and submit the information obtained and held to the beneficiary VASP or FI (if any) immediately and securely and make the information available on request to appropriate authorities (reg. 15(3-5), SECR). The requirements do not apply to cross-border transfers below $1,000. However, CMOs must ensure that all such transfers include the name of the originator, the name of the beneficiary, and the wallet address for each and verify the information pertaining to the customer if there is a suspicion of ML or TF (reg. 15(6), SECR).

127. **Criterion 15.10:** CMOs are required to comply with all the requirements of the UNSCRs as provided under the TPPA, TF.R and PF.R (reg.95(1), SECR). Therefore, TFS communication mechanisms, reporting obligations and monitoring referred to in criteria 6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3 and 7.4(d) apply to VASPs.

128. **Criterion 15.11:** Nigeria seeks to rely on its LC ratings for Recommendation 37-40 in the MER, including the powers and ability of the CBN and SEC to cooperate under the relevant provisions of their enabling legislation and SEC's membership of IOSCO. However, Nigeria did not provide information evidencing its provision of the widest range of international cooperation in relation to ML, predicate offences and TF relating to VAs, including when there are differences in the nature or status of the foreign and Nigerian supervisors and the nomenclature or status of VASPs. Also, all the deficiencies identified in Recommendations 37-40 apply including the absence of a legal basis for SEC to share supervisory information for AML/CFT purposes. Also, financial supervisors are not empowered to share information on internal AML/CFT procedures and policies of FIs, customer-related information, as well

as facilitate or conduct enquiries on behalf of their foreign counterparts, or exchange information with non-counterparts.

Weighting and conclusion

129. Although VASPs have also been classified as Capital Market Operators (CMOs) under the SECR, the Nigerian authorities are yet to issue guidelines and/or provide feedback to assist VASPs in applying national measures to combat ML/TF/PF, especially in detecting and reporting suspicious transactions. Nigeria did not demonstrate proactive steps to identify natural or legal persons that carry out VASP activities without the requisite registration and applied appropriate sanctions to the VASPs.

130. **Recommendation 15 remains rated Partially Compliant.**

IV CONCLUSION

131. Overall, Nigeria has made significant progress in addressing the technical compliance deficiencies identified in Recommendations 7 and 19 and only minor deficiencies remain. Nigeria has been re-rated Compliant on Recommendations 3, 11 and 20. Insufficient progress has been made to support a rerating for Recommendations 6, 12 and 15.

132. A summary table setting out the underlying deficiencies for the Recommendations assessed in this report is included at **Annex A.**

133. Overall, in light of the progress made by Nigeria since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of May 2022:

Table -2. Technical Compliance Ratings[5](May 2022)

R.	Rating
1	PC(MER 2021)
2	PC(MER 2021)
3	PC(MER 2021) ↑ **C (FUR 2022)**
4	C(MER 2021)
5	LC(MER 2021)
6	PC(MER 2021) PC **(FUR 2022)**
7	NC(MER 2021) ↑ LC **(FUR 2022)**
8	NC(MER 2021)
9	C(MER 2021)
10	LC(MER 2021)
11	PC(MER 2021) ↑ C **(FUR 2022)**
12	PC(MER 2021) PC **(FUR 2022)**
13	C(MER 2021)
14	C(MER 2021)
15	PC(MER 2021) PC **(FUR 2022)**
16	LC(MER 2021)
17	LC(MER 2021)
18	LC(MER 2021)
19	PC(MER 2021) ↑ LC **(FUR 2022)**
20	PC(MER 2021) ↑ C **(FUR 2022)**

R.	Rating
21	LC(MER 2021)
22	PC(MER 2021)
23	PC(MER 2021)
24	PC(MER 2021)
25	PC(MER 2021)
26	LC(MER 2021)
27	LC(MER 2021)
28	PC(MER 2021)
29	C(MER 2021)
30	C(MER 2021)
31	C(MER 2021)
32	PC(MER 2021)
33	PC(MER 2021)
34	PC(MER 2021)
35	LC(MER 2021)
36	LC(MER 2021)
37	LC(MER 2021)
38	LC(MER 2021)
39	LC(MER 2021)
40	LC(MER 2021)

134. Nigeria has 26 Recommendations rated C/LC. Nigeria will remain in Enhanced Follow-up based on effectiveness ratings. Nigeria's next Enhanced FUR is due in November 2023.

[5] Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Annex A: Summary of Technical Compliance – Deficiencies underlying the ratings[6]

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating[7]**
Recommendation 3	PC(MER 2021) C(FUR 2022)	• All the criteria are met.
Recommendation 6	PC(MER 2021) PC(FUR 2022)	• There is no provision or practical cases to show the timeline for implementation in practice for UNCSR 1373. • The application of unfreezing measures under both UN and national regimes is limited to situations where freezing occurs as a result of similarities in names or other error. • There is no requirement to provide specific information supporting Nigeria's request to third countries for designation. • The scope of connection with designees is limited to "currently listed individuals". • There is no specific provision on awareness of government authorities maintaining registries of title to specific types of property, or those responsible for the disbursement of funds or other assets, of asset freezing action and measures to implement the freezing obligation.
Recommendation 7	NC(MER 2021) LC(FUR 2022)	• There are discrepancies regarding procedures for delisting applications. • The legal framework or mechanism does not cover communication of all PF-related de-listings and unfreezing to FIs and other persons or entities, including DNFBPs.
Recommendation 11	PC(MER 2021) C(FUR 2022)	• All the criteria are met.
Recommendation 12	PC(MER 2021) PC(FUR 2022)	• The requirements do not cover family members or close associates of domestic and foreign PEPs.
Recommendation 15	PC(MER 2021) PC(FUR 2022)	• Nigerian authorities are yet to issue guidelines and/or provide feedback to assist VASPs in applying national measures to combat ML/TF/PF, especially in detecting and reporting suspicious transactions. • Nigeria did not demonstrate proactive steps to identify natural or legal persons that carry out VASP activities without the requisite registration and applied appropriate sanctions to the VASPs.
Recommendation 19	PC(MER 2021) LC (FUR 2022)	• NFIU advisories and sector Regulations (except insurance companies) do not set out examples of the types of measures that EDD could include.
Recommendation 20	PC(MER 2021) C (FUR 2022)	• All the criteria are met.

[6] Ratings and factors underlying the ratings are only included for those Recommendations under review in this FUR.

[7] Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

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November 2022



Anti-money laundering and counter-terrorist financing measures - Federal Republic of Nigeria

1st Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Nigeria's progress in addressing the technical compliance deficiencies identified in the GIABA assessment of the country's measures to combat money laundering and terrorist financing as of August 2021.

The report also looks at whether Nigeria has implemented new measures to meet the requirements of the FATF Recommendations that have changed since its 2nd Round Mutual Evaluation in October 2019.

Follow-up Report