

Inter-Governmental Action Group Against Money Laundering in West Africa

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Report on Observance of Standards and Codes

12th June 2007

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SUMMARY ASSESSMENT OF OBSERVANCE OF STANDARDS AND CODES FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT)[1]

Introduction

1. This Report on the Observance of Standards and Codes for the FATF Forty Recommendations (2003) on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff and consultant of the World Bank, using the 2004 AML/CFT Methodology.

2. This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance with the prevailing context of Sierra Leone. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Sierra Leone or the Boards of the International Monetary Fund (IMF) and the World Bank.

Information and methodology used for the assessment

3. In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Sierra Leone on July 21, 2006.

Main Findings

4. In spite of Sierra Leone having recently emerged from a civil war, the government has taken several important steps in an attempt to address the threat of ML and FT. These efforts included the promulgation in 2002 of regulations pursuant to the Banking Act (BA) and Other Financial Services Act (OFSA) introducing AML/CFT preventive measures for the financial sector and the enactment in July 2005 of the Anti-Money Laundering Act (AML Act). The AML Act extends preventative measures to designated non-financial businesses and professions, and creates the basic framework for Sierra Leone's AML regime. A core feature is the criminalization of ML which is broadly in line with international standards. In respect of the measures to combat

[1] Prepared by a World Bank team led by Mr. Stuart Yikona, and comprising Mr. Mark Butler and Mr. Richard Gordon (Consultant).

FT, Sierra Leone ratified the United Nations International Convention for the Suppression of the Financing of Terrorism (SFT Convention) in September 2003.

5. Despite these efforts, Sierra Leone's AML/CFT regime remains ineffective. The areas of concern include: i) no implementation of the key points of the AML Act, particularly the creation of the FIU; ii) very limited effective supervision by the Bank of Sierra Leone (BSL) of AML/CFT preventive measures for the financial sector; iii) a number of irregularities in the AML Act which have significant consequences for the application of the act; iv) the failure to introduce the provisions of the SFT Convention in domestic law; and v) an absence of a legislative, regulatory or institutional mechanism for the implementation of all the provisions of UNSCR 1267 and 1373. The assessment team believes that addressing these concerns would not require considerable resources, and would significantly advance the country's AML/CFT regime in the short term.

General

General Situation of Money Laundering and Financing of Terrorism

6. Since the end of the civil conflict in 2002, the general crime situation within Sierra Leone has been continuously improving. Whilst there are still some border areas which are a security concern, the rest of the country is benefiting from a more secure environment. The available crime statistics do not indicate the existence of a significant amount of crime which would generate crime proceeds. The predominant use of cash within Sierra Leone means the majority of money laundering and terrorist financing is likely to occur outside of the financial sector.

7. Sierra Leone suffers from petty corruption involving low and middle level public officials though there are some allegations involving larger scale corruption.

8. Diamond smuggling was a problem during the civil conflict from 1991-2002. Whilst the Kimberley certification process has reduced the proportion of the illicit diamonds, sizeable quantities of diamonds are still smuggled out. Though the majority of the smuggling activity is not linked to the laundering of criminal proceeds, the potential for association with money laundering or the funding of terrorism remains.

9. The authorities assess that there is a low risk of terrorist activity occurring within Sierra Leone though there have been claims that terrorist funding activities may occur in Sierra Leone.

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

10. The formal financial sector includes 7 commercial banks, 5 international money transfer agents affiliated with the commercial banks, 13 other small deposit-taking institutions (including a state development bank in the process of being wound-up), 2 discount houses that primarily trade in discounted debt, 52 licensed and a large number of non-licensed exchange bureaus, and a tiny insurance sector.

11. As a small relatively poor developing country with the majority of development occurring along the Atlantic Coast, Sierra Leone has always had a small financial sector, focused primarily on government and those commercial sectors involved in international trade. During the civil conflict, the formal financial sector shrank significantly leading to Sierra Leone effectively becoming a cash economy. Following the end of the conflict, there has been some

development in the banking sector though it is still in its infancy and is principally based within Freetown. In spite of this recovery, Sierra Leone remains essentially a cash-based economy. There are only around 160,000 bank accounts in Sierra Leonean banks, of which between 65 and 70 percent are personal accounts, most of which are relatively small savings accounts. The majority of corporate accounts are held by organizations involved in international trade.

12. There is a very small non-bank financial sector. Only 4 insurance companies offer any type of life insurance and none offers policies with an investment dimension. There is as yet no stock market and no licensed broker/dealers, although there are some very limited over the counter transactions.

13. The DNFBP sector includes accountants, lawyers, real estate agents, casinos, and dealers in precious metals and precious stones. There are a limited number of accountants which are mainly occupied in servicing the commercial banks, a small number of large companies, and international aid agencies. With respect to lawyers, these are mainly sole practitioners. Lawyers are sometimes involved in arranging the purchase and sale of real estate. They are also required by law to handle the incorporation of companies and registration of sole proprietorships; and partnerships.

14. Sierra Leone has significant deposits of both precious metals and stones, with the principal ones being gold, bauxite, and diamonds. The introduction of the Kimberly process in 2002, which requires diamond merchants globally to produce a certificate of origin when selling uncut diamonds, has led to a substantial increase in legitimate diamond exports, which have risen from US$6.5 million in 2000 to US$142 million in 2005. Sierra Leonean law requires that all exploration, mining, dealing, and exporting of minerals are conducted by licensed persons. There are currently 82 licensed diamond dealers and 7 licensed diamond exporters. However, the number of artisanal mining licenses issued was unavailable but it is estimated that there are many thousands of Sierra Leoneans involved in artisanal mining. It should be noted that transactions are predominately done in cash in US dollars. There is limited retail sale of precious metals and stones which is primarily due to the low income levels of the average citizen.

15. There are only a few real estate dealers in Sierra Leone. Real estate transactions are predominantly conducted in cash directly between the buyer and seller though occasionally, the real estate dealer may be involved in the transaction. Further, it should also be noted that there is currently no legislation concerning the registration of land title.

16. There are four casinos which are situated around Freetown. These are licensed by the National Tourist Board of Sierra Leone though there is no supervision of the gambling activities. There are no known internet casinos operating within Sierra Leone.

Legal System and Related Institutional Measures

17. The criminalization of money laundering is found in the Anti-Money Laundering Act, 2005 (AML Act). The offence of ML is defined in a manner which is generally consistent with the Vienna and Palermo Conventions. Sierra Leone adopts an all crimes approach to define the predicate offences, which includes offences punishable by death or imprisonment of not less than twelve months. However, Sierra Leone has not criminalized some of the designated categories of offences as stipulated in the FATF standards. The authorities advise that the offence of ML as currently provided in the AML Act applies to persons who commit a predicate offence and can be prosecuted for laundering of one's own illicit funds. . There are penal and financial sanctions

available for the ML offence, which applicable to both natural and legal persons; however, these were considered not to be proportionate and dissuasive.

18. Sierra Leone has not criminalized FT and none of the provisions of the AML Act cover FT even though it has ratified the UN International Convention for the Suppression of the Financing of Terrorism.

19. Whilst Sierra Leone has taken some steps in response to relevant UN Security Council Resolutions, which included establishing a high level National Committee on Counter-Terrorism, there is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons.

20. Provisional measures for confiscation, freezing and seizing of proceeds of crime are found in sections of the AML Act, the Anti-Corruption Act (ACA) and the Civil Procedure rules of Sierra Leone. A civil standard of proof is used in determining whether or not to order the confiscation of property. The Bank of Sierra Leone (BSL), the Central Intelligence Service Unit (CISU) and the Attorney-General (AG), who is also the Minister of Justice, are the agencies authorized under the AML Act to make application to the court for confiscation and provisional measures. However, there is no framework for the freezing, seizing or confiscation of the instrumentality used or intended for use in the commission of a predicate offence or those related to FT.

21. The AML Act provides for the creation of the Financial Intelligence Unit (FIU). However, to date, the FIU has not been formally set up. The authorities stated that it is proposed that the Anti-Money Laundering Division (AMLD) of the Banking Supervision Department, which was set up in 2002, will become the FIU once a decision is made for it to become operational. BSL, which lacks resources in both human and logistical terms, has sought technical assistance from the UNODC in the creation of the FIU.

22. AMLD has received one STR pursuant to the money laundering regulations issued in September 2002 to financial service providers under the Banking Act (BA) and Other Financial Services Act (OFSA) though subsequent enquiry into the matter revealed that there was no suspicion. The report was therefore not disseminated.

23. The FIU is empowered to analyze and disseminate any report received by it. The report will be disseminated when it is considered that there are "reasonable grounds" to believe the reported transaction involves the proceeds of crime. The reports can be disseminated to either the Director General of CISU or the AG's office. However, it is unclear why these two agencies have been chosen to receive the report as neither is able to conduct all aspects of an investigation. CISU, which is authorized to conduct operations to protect the State from threats including terrorism, money laundering and other serious crimes, operates covertly and its staff have no power of arrest. The AG's Office has no mandate to conduct investigations. In disseminating the report to the AG's Office, the authorities believed the report would be referred to the Sierra Leone Police (SLP) for investigation.

24. Staff of AMLD have attended some training seminars but there was limited understanding of the role of the FIU and its functions. Furthermore, no detailed thought has been given to designing a formal analysis process and the information which the FIU would need to or was able to access. It should be noted that the AML Act does not provide the FIU with the authority to request any information from any entity other than financial institutions. This may

significantly limit the information available to the FIU and restrict its ability to efficiently analyze the reports made to it.

25. Sierra Leone currently has four agencies that could be involved with the investigation and prosecution of ML and TF cases, namely the SLP, the National Revenue Authority (NRA), the Anti-Corruption Commission (ACC) and the Office of the Director of Public Prosecutions (DPP). However, none of the investigation agencies have been designated to conduct such investigations. Whilst the CISU has been mandated with responsibility to tackle the threat of money laundering and terrorism, it is unable to bring a matter to court without assistance from another law enforcement agency. All of the law enforcement agencies suffer both human and logistical constraints and none of them have received any training in conducting financial investigations. The authorities reported that no money laundering and terrorist financing investigations have been conducted to date.

26. Sierra Leone has foreign exchange regulations which do impose some cross border currency transportation reporting requirements. However, the controls are not implemented and enforced. The AML Act does provide for the monitoring of the cross-border transportation of currency or bearer negotiable instruments. Section 20 requires a person who leaves or enters Sierra Leone with more than USD10,000 worth of currency or bearer negotiable instruments, to report the fact to the Authority beforehand, otherwise they commit an offence.

27. Mechanisms for the collection of AML/CFT related statistics have not been developed due to the lack of implementation of the AML Act.

Preventive Measures – Financial Institutions

28. The legal framework for preventive measures for financial institutions can be found in the AML Act and the Money Laundering Regulations (MLR). The AML Act applies to all financial institutions as required by the FATF 40 + 9, whereas the MLR applies only to those financial institutions that are regulated by the BSL under the BA and the OFSA.

29. The MLR, which came into effect in 2002, is relied on as the primary instrument for preventative measures within the financial sector in Sierra Leone and covers nearly all of the mandatory preventative measures set out in the FATF standards. However, the AML Act, which came into effect in 2005 and also introduces preventative measures, is deficient in some key areas such as client profiling and procedures for high risk clients, including PEPs. Compliance with the MLR is enforced through the BSL's program of supervision and examination. Sanctions for non-compliance include revocation of license, removal and replacement of management, officers and staff, mandatory instructions and fines. While the BSL engages in a program of annual on-site and periodic off-site examination of commercial banks and licensed foreign exchange bureaux, it has yet to include more than a few provisions of the MLR in its supervisory examination program. It should be noted that the current capacity of the BSL supervision department is inadequate for existing prudential supervisory tasks, let alone the additional demands that adding AML/CFT issues would create. Gearing up for an effective AML/CFT supervisory program in line with international standards will require the addition of both staff and staff support resources. Notwithstanding these limitations, the BSL has taken several enforcement actions against commercial banks for failure to identify customers properly.

30. Under the AML Act, the Governor of the BSL is the person with primary responsibility for ensuring compliance with preventive measures. The Act further specifies criminal sanctions, including fines and imprisonment, for breaching the obligations. In this regard, it should be recognized that while criminal sanctions mean that law enforcement agencies are involved in

sanctioning non-compliance with the AML Act, no law enforcement agency appears to be aware of this responsibility.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

31. The preventive measures for DNFBPs are set out in the AML Act. As mentioned above, the AML Act is deficient in addressing the mandatory preventative measures set out in the FATF standards. Furthermore, it places the same obligations on the DNFBPs as for financial institutions without regard to the appropriate flexibility permitted by the FATF standards.

32. With the exception of lawyers and accountants, who have statutory SROs, there is no framework to ensure compliance by the other DNFBPs other than the BSL pursuant to the AML Act.

Legal Persons and Arrangements and Non-Profit Organizations

33. By virtue of legislation concerning business registration and trusts, the types of legal persons which can be formed within Sierra Leone, are limited liability companies, sole proprietorships, partnerships and trusts. All legal persons except trusts must be registered with the Office of Registrar and Administrator General (ORAG). Any person can inspect the records of ORAG upon paying a search fee. Records are kept manually and include relevant information on companies and undertakings: legal status, date of establishment, company capital, directorships, tax code, corporate bodies and powers of representation. In addition, every company is required to keep a register of its members and include in their books the following particulars: the names and addresses, and the occupations, if any, of the members, a statement of the shares held by each member, the date at which each person was entered in the register as a member, the date at which any person ceased to be a member.

34. This transparency mechanism whereby the public can access the company registry conforms to international standards, although it provides only for the legal title holder of shares and not beneficial owner. Furthermore, as the information on the companies is manually recorded and maintained, there is a possibility that the information stored will not be accurate and reliable. Moreover, the ORAG has no enforcement powers to compel companies to file their annual returns in a timely, consistent and efficient manner.

Non-Profit Organizations

35. There is no legislative or regulatory framework to regulate the operations of Non-Profit Organizations (NPOs). Consequently, the NPO is governed by a document referred to as a 'Policy Regulation', which is not issued under the authority of any law, but was issued by the Government of Sierra Leone (GoSL) for the Operations of Non-Governmental Organizations (March 2004). The various types of NPOs operating in Sierra Leone include national and international, developmental, humanitarian/relief organizations with capacity to undertake active development or humanitarian/relief work in more than three chiefdoms in Sierra Leone. In addition, an NGO is required to be a member of the Sierra Leone Association of NGO (SLANGO) and they have to produce annual audited accounts to the NGO Coordinating Unit (NGO Unit) established by the Ministry of Development and Economic Planning, which is responsible to monitor NGO activities.

National and International Cooperation

36. There is no specific agency or institution that has been mandated to coordinate the Government's AML/CFT policies and international relations. An ad hoc committee, composed of some of the relevant AML/CFT stakeholders, was set up in January 2006 for the purpose of trying to resolve an issue that dealt with the policy related to the cross-border physical transportation of currency as well as to ensure the implementation of the AML Act.

37. The mechanisms for domestic cooperation and coordination have not been effective. The level of consultation among the critical AML/CFT relevant bodies has been minimal. The authorities nevertheless have been making efforts to strengthen coordination among national authorities although much remains to be done. On the other hand, consultation with the private sector, remains a major weakness for institutions that are required to comply with the AML Act.

Summary Assessment against the FATF Recommendations

38. Sierra Leone's AML/CFT legislative and regulatory framework is still in its formative stage. Although the AML Act has been in place for a year, there has not been effective implementation of the Act. Furthermore, there has been no specific supervision of the banking sector on the Money Laundering Regulations of 2002 which were issued pursuant to the Banking Act. Consequently, Sierra Leone's AML/CFT system is significantly deficient with regard to meeting the requirements of the 40+9 Recommendations. Notwithstanding this inadequacy, the risk that financial institutions are currently being used to launder significant proceeds is relatively low due to the cash based nature of the economy and the size of the sector. The AML/CFT legislative, regulatory and institutional framework needs to be enhanced in order to implement the international standards. Establishment of the FIU, effective supervision of AML compliance by financial institutions, enactment of a FT law and creation of an institutional mechanism to implement UN Security Council Resolutions will significantly enhance Sierra Leone's compliance with international standards. However, Sierra Leone will need technical assistance to effectively implement the provisions of the AML Act.

TABLE: MAIN RECOMMENDATIONS FOR STRENGTHENING THE MECHANISM TO COMBAT MONEY LAUNDERING AND THE FINANCING OF TERRORISM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2 & 32)	• Amend the scope of the predicate offences to narrow the scope to include only those foreign offences which had they occurred in Sierra Leone would have constituted an offence. • Increasing the severity of the sanctions imposed for ML both in the prison term and the monetary penalty.
Criminalization of Terrorist Financing (SR.II, R.32)	• Criminalize FT. • Fully implement all the other provisions of the SFT Convention.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• Provide legislative and regulatory measures for the freezing, seizing and confiscation of instrumentalities used or intended to be used in the commission of predicate offences or offences related to FT. • Enabling the SLP as the primary agency responsible for the investigation of criminal cases to apply for the relevant orders.
Freezing of funds used for terrorist financing (SR.III, R.32)	• Establish the regulatory and institutional framework for implementing all requirements of UNSCR 1267 and 1373.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Empower the FIU as the authority to analyze and disseminate reports received under Section 6 and 14 of the AML Act. • Enable the FIU to receive information from other government departments to assist in its analysis of the reports. • Review whether there is need to disseminate reports to agencies other than the CISU and the AG's Office to enable effective investigation of the matters. • Organize training for the staff of the AMLD on the operations of the FIU, the role of the FIU within an AML/CFT regime, and STR analysis. • Review the staffing levels for the FIU to ensure the responsibilities assigned to the FIU by the AML Act and by the Governor of the BSL, can be met. • Finalizing the draft suspicious transaction report forms after consultation with all appropriate bodies including the reporting institutions. • Issue guidelines to the reporting institutions with guidance on the reporting requirements contained within the AML Act and how the reports should be submitted to the FIU. The regulations should include the finalized reporting forms.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Designate an investigative agency with the capability to perform all aspects of an investigation, to conduct ML or TF investigations. • Conduct a detailed review of the resources available to investigate and prosecute ML and TF. • Organize training on financial investigations for the relevant investigative agencies.
Cash Couriers (SR. IX)	• Determine the full consequences of the introduction of Section 3

	of the AML Act. • Implement the requirements of Sections 3 and 20, after consulting with the authorities involved with the effects of the implementation, and issuing exceptions in accordance with Section 3, where required. • Introduce systems to ensure the proper collection and storage of the completed currency declaration forms and which enable access to the appropriate information by the FIU.
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	• No text
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Revise the MLR to include provisions consistent with FATF Recommendation 5 regarding application of CDD to existing customers, and Recommendation 7 regarding payable through accounts, and Recommendation 8, regarding AML risk from new technologies. • The BSL should cover all CDD measures in its supervision and examination. • The BSL should consider the appropriateness of allowing supervised persons to apply reduced CDD rules in low risk cases to ensure access to financial services for all persons.
Third parties and introduced business (R.9)	Nil
Financial institution secrecy or confidentiality (R.4)	• Conduct a review of all laws to ensure that none inhibits the operation of AML/CFT rules.
Record keeping and wire transfer rules (R.10 & SR.VII)	• The BSL should cover formally all rules relating to record keeping and wire transfer in its supervision and examination.
Monitoring of transactions and relationships (R.11 & 21)	• The BSL should cover formally all rules relating to complex and unusual large transactions and their examination, special attention to countries not applying the Recommendations, and to the application of countermeasures in its supervision and examination.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The BSL should cover formally all rules relating to suspicious transaction reporting in its supervision and examination.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• The MLR should be updated to include provisions concerning foreign branches and subsidiaries. • The BSL should cover formally all rules relating to internal controls, audit function, employee training, screening procedures, compliance officers, and application of AML/CFT measures to foreign branches or subsidiaries in its supervision and examination.
Shell banks (R.18)	
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• The BSL should cover formally the entire MLR in its supervision and examination, and should apply sanctions as appropriate.
Money value transfer services (SR.VI)	• The BSL should conduct supervision of the money or value transfer service operators with respect to the MLR.

4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Issue regulations applicable to DNFBPs which address the CDD issues and consider introducing the thresholds and transaction types relevant to DNFBPs as specified in the FATF Standards. • Develop and implement a plan for ensuring compliance with the regulations.
Suspicious transaction reporting (R.16)	
Regulation, supervision and monitoring (R.24-25)	• Designate an authority to license and supervise casinos in relation to their gaming operations and any related financial transactions. • Designate an appropriate authority for each of the DNFBPs sectors for ensuring compliance with AML/CFT measures.
Other designated non-financial businesses and professions (R.20)	• Devise a strategy to develop the formal financial sector and to increase access to financial services.
5. Legal Persons and Arrangements & Non-Profit Organizations	
Legal Persons – Access to beneficial ownership and control information (R.33) Legal Arrangements – Access to beneficial ownership and control information (R.34)	
Non-Profit Organizations (SR.VIII)	• Introduce legislation or regulations including AML/CFT measures to enable the formal supervision of the NGO sector.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• Designate an agency with responsibility to coordinate the implementation of the Government's AML/CFT policies.
The Conventions and UN Special Resolutions (R.35 & SR.I) Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• Ratify the Palermo Convention.
Extradition (R.39, 37, SR.V & R.32)	• Provide for the prosecution of Sierra Leonean nationals who cannot be extradited to a requesting State.
Other Forms of Co-operation (R.40, SR.V & R.32)	• Enhance agency to agency cooperation with their counterparts in the region.
7. Other Issues	No text required

Response of authorities to the assessment (if necessary)

The authorities consider the report to be a fair assessment of the Sierra Leone situation.