

Politically exposed persons: Issues and matters arising

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The term politically exposed persons (PEPs) originated in the Swiss banking community and has been relevant within this sphere for several decades due to the high profile of many Swiss banking clients. The famous case of Ferdinand and Imelda Marcos "Steel Butterfly and the Dictator" and millions in illicit funds hid in Swiss bank accounts highlighted the need for enhanced client due diligence and ongoing transactional screening when dealing with senior politicians, their associates and families as clients. In Nigeria, the concept may be new in the sphere of public discuss and lexicon. However, the case of the late former governor of Bayelsa State, Diepreye Solomon Peter Alamiyeseigha, a UK associated PEPs with approximately 18 financial vehicles and other legal entities who pleaded guilty to six counts of corruption during July 2007 and was convicted of six counts of fraud and false declaration of assets brought to the fore the inherent exposure to domestic PEPs risk.

The prominence of the concept in the international community can arguably be traced back to Financial Action Task Force (FATF) recommendations of 2003 on Money Laundering wherein an attempt was made to proffer a definition for PEPs. Although there is no generally acceptable definition of term, varying attempts have been made to define PEPs in the context of the risk it poses to investment and the business community at large. The FATF defines PEPs as "individuals who are or have been entrusted with prominent public functions in a foreign country, for example heads of state or of government, senior politicians, senior government, judicial or military officials, senior executive of state owned corporations, important political party officials. Business relationship with family members or close associate of PEPs involves reputational risk similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

Basel Committee on Banking Supervision defines PEPs as "Individuals who are or have been entrusted with prominent public functions, including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party official." UK Joint Money Laundering Steering Committee Group 2009 defines PEPs as "An individual who is or has at any time in the preceding year, has been entrusted with prominent public functions, and an immediate family member, or a known or close associate of such persons. This definition only applies to those holding such a position in a state outside the UK or in a community institution or an international body."

The forging definitions provide an insight into the meaning of PEPs and categories of persons that can be classified as PEPs. However, the lack of international

acceptable definition and clarity in the definition of PEPs has significant impact on financial institutions compliance obligations. Knowing persons who classified as PEPs and those who are not is crucial to the effectiveness of Anti-Money Laundering Compliance Programme. For instance, the Basel Committee's definitions vary from FATF in the sense that it does not include family members or close associates but covers middle ranking or more junior individuals and excludes provision for PEPs in a foreign country. The UK JMLSC's definition differs from FATF's definition by placing restriction on time and the use of the phrase "prominent public function" which is obviously vague and capable of diverse interpretations.

The implication of unclear definition of PEPs by FATF has resulted in the exclusion family members beyond immediate family, junior and middle ranking PEPs, close associate, and domestic PEPs thereby overlooking the inherent risk exposure of institutions who may be dealing with these individuals. The use of the phrase "in a foreign country" by FATF made its definition of little or no significance within the domestic circle where the PEPs operate. This definition is a useful guide when a UK-based financial institution is dealing with persons who reside outside the UK but does not help the local Nigerian bank to identify PEPs in the domestic sense; rather the definition would be useful to a Nigerian bank dealing with PEPs in UK.

This is a misnomer because the entire 40+9 recommendations apply PEPs provisions to foreign PEPs. Hence, a Nigerian bank that desirous of complying with the highest standard of compliance applicable anywhere in the world in fulfilling its domestic compliance obligations may not find solace in FATF's recommendation. Although the interpretation note of the recommendation encourages countries to extend the requirement to domestic PEPs, this can only be advisory and does not form the substance of the definition of PEPs. Although it has been argued that FATF's recommendations are mainly advisory and failure of states to follow the recommendations does subject states to sanctions. Nonetheless, one would have expected an immediate amendment to the recommendations following barrage of criticisms that has bedevilled the definition.

The question is why would FATF place such weighty provision in the interpretation note as against its substantive recommendations? Why is reference made to domestic PEPs in the interpretation note when same was not implied or inferred in the express definition of PEPs by FATF? Who is a domestic PEP or Foreign PEP? The limitation contained in FATF's definition has created a distinction where there should be no difference. The same effort used by FATF in interpreting the recommendation could have been used to reword the definition to accommodate both PEPs in domestic and foreign country. The implication of FATF definition is that the risk exposure to PEPs locally is likely to be undermined by local financial institutions as attention will be focused on foreign PEPs whereas corrupt public office holders are no longer interested in moving the proceed of corruption outside the country due to the tight

AML enforcement regime rather have devised a scheme for laundering money locally.

Although the fight against money laundering requires concerted effort amongst regulators and the financial institutions, it is worrisome to know that the enforcement of AML legislations and the effectiveness of the system lean heavily on the collaboration with the financial institutions.

The pursuit of profit at all cost by financial institutions has made it near impossible to trust the commitments of the institutions to the fight against money laundering.

Money laundering investigation and enforcement starts with the financial institutions filing various reports either STR or SAR. The question is how many of the current AML cases in Nigeria were triggered by the reports filed by local financial institutions? The failure of Nigerian banks to file these reports can be attributed to the culture of impunity and corruption that has become a way of life. In Nigeria, no money is dirty; hence violation of AML obligations are rarely sanctioned or prosecuted by regulators and law enforcement agencies. The government is busy prosecuting launderers but without considering the role of the banks in aiding the laundered monies. As at the time of writing this article, no Nigerian bank has come out to state its involvement or make available the due diligence report or enhanced due diligence report issued with respect to the various indicted account holders.

The question is how has Nigerian banks fared in terms of compliance with AML compliance obligations? In Nigeria, PEPs are untouchable and highly esteemed by financial institutions. This is not surprising because government institutions and PEPs are the preferred clients of financial institutions operating in Nigeria. The financial institutions are the major beneficiaries of corruptions as they use this dirty money to boost liquidity and create artificial balance sheet. Sadly, a successful enforcement of AML requires the cooperation of the financial institutions. Whilst in other part of the world financial institutions are skeptical about dealing with PEPs, in Nigeria, knowing PEPs is a meal ticket and guarantees you a promotion within the financial institution.

The Financial Intelligence Unit (FIU) of the Central Bank of Nigeria has been docile over its monitoring functions of the financial institutions prior to this time. This is because the previous administration allowed corruption to breed in an uncontrollable proportion. In the wake of the current fight against corruption, the entire anti-money laundering framework of Nigeria needs to be overhauled in order to forestall future Dasukigate's \$2.1 billion (arms deal scandal in Nigeria). It is worthy of note to state that financial institutions failed because there was a failed government in Nigeria before now.

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