

GUIDELINES FOR PRIVATE SECTOR RESPONSE TO IFF VULNERABILITIES IN NIGERIA

Prepared by the



Independent Corrupt Practices and
Other Related Offences Commission

In collaboration with



Inter-Agency Committee on
Illicit Financial Flows

With the support of



FORD
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Independent Corrupt Practices and Other Related Offences Commission (ICPC) was established in 2000 by Act No. 5 of Year 2000. Its mandates include enforcement, prevention, public education and enlightenment.

ICPC serves as Secretariat for the Inter-Agency Committee on Stopping Illicit Financial Flows (IFFs) from Nigeria (IAC-IFF)

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Foreword

Illicit Financial Flows (IFFs) unless checked, will continue to significantly impede domestic revenues mobilization, enable corruption, threaten economic stability and sustainable development goals, divert money from public priorities and hamper Government's efforts at national growth, development and recovery.

In Nigeria and across the African continent, we continue to suffer various forms of IFFs, including tax evasion and other harmful tax practices, the illegal export of foreign exchange, abusive transfer pricing, trade mis-pricing, mis-invoicing of services, illegal exploitation and under-invoicing of natural resources, organized crimes and corruption.

As one of the most affected countries, Nigeria has demonstrated strong commitment to addressing Illicit Financial Flows (IFFs) through participation in the Open Government Partnership and the significant progress made in the extractive industry. Also, the involvement of technology-enabled improvements in tax collection and compliance has helped deter tax crime and facilitate public trust. Also, the main streaming of transparency and anti-corruption measures into economic policy making processes significantly reduces crime. Similarly, establishing an accurate, up-to-date and public beneficial ownership register; and strengthening the automatic exchange of tax information; helps address the commercial components of IFFs.

The Independent Practices and Other Related Offences Commission (ICPC) has been in the forefront in the fight against Corruption, Illicit Financial Flows (IFFs) and other Related Offences. The Guidelines for the Codification of Private Sector Response to Stemming IFFs in Nigeria put

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Guidelines for Private Sector Response to Illicit Financial Flows Vulnerabilities in Nigeria

together by the ICPC is designed to support the Nation's effort at tackling / checking IFFs in the Private Sector

I have no doubt that these Guidelines will further strengthen the Private Sector response to stemming to IFFs and the result therefrom will impact positively on the Nation's economic well-being.

Mrs. Zainab Shamsuna Ahmed

*Hon. Minister of Finance,
Budget and National Planning
March 2023*

Prepared by ICPC



Preface

The issue of Illicit Financial Flows has come to the forefront of global concerns because it signals the loss of resources that could otherwise have been used for development purposes. The impact of Illicit Financial Flows goes beyond financial losses and includes the negative impact on governance and opportunity cost of lost investments.

As established by the High-Level Panel on Illicit Financial Flows from Africa chaired by former President Thabo Mbeki of South Africa, one of the main ways through which Illicit Financial Flows happen is through commercial outflows such as tax evasion, abusive transfer pricing, trade mis-invoicing as well as underreporting of the price and quantity of natural resources. This is why the private sector has a key role to play in stemming Illicit Financial Flows from Nigeria.

This publication “Guidelines for Private Sector Response to IFF Vulnerabilities in Nigeria” published by the ICPC is therefore very important to enable private sector practitioners better understand the phenomenon of IFFs and provides guidance to them on what to look out for and avoid in the course of their business transactions. This is important because research has shown that large companies including multinational entities, international banks, large legal and accounting firms are wittingly or unwittingly drivers and enablers of illicit financial flows.

The Inter-Agency Committee on Illicit Financial Flows is very pleased to have worked with the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in undertaking the activities that have raised awareness and promoted cooperation amongst relevant stakeholders in the

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fight against IFFs. This publication is one of such outcomes and will no doubt assist the Nigerian private sector to contribute its quota to stemming illicit financial flows from Nigeria.

Ambassador Adeyemi Dipeolu PhD, OON
Special Adviser to the President on Economic Matters
Chairman, Inter-Agency Committee on IFFs

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Acronyms

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorise
BEPS	Base Erosion and Profit Shifting
CAC	Corporate Affairs Commission Nigeria
CDD	Customer Due Diligence
CEO	Chief Executive Officer
CFO	Chief Financial Officer
DTA	Double Taxation Agreements
EOIR	Executive Office for Immigration Review
FATF	Financial Actions Task Force
FIRS	Federal Inland Revenue Service
FMoF	Federal Ministry of Finance
GIABA	The Inter-Governmental Action Group Against Money Laundering in West Africa
HLP	United Nations Economic Commission for Africa, Thabo Mbeki High Level Panel
IAC-IFF	Inter-Agency Committee on Illicit Financial Flows
ICPC	Independent Corrupt Practices and other related offences Commission
ICT	Information Communication Technology
IFFs	Illicit Financial Flows
IP	Intellectual Property
MLI	Multilateral Convention to implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
NCCG	Nigeria Code of Corporate Governance

NDLEA	National Drug Law Enforcement Agency
NEITI	Nigeria Extractive Industries Transparency Initiative
NFIU	Nigeria Financial Intelligence Unit
SDGs	Sustainable Development Goals
SOPs	Standard Operating Procedures
TBML	Trade based money laundering
UNCAC	United Nation Commission Against Corruption
UNTAD	United Nations Conference on Trade and Development
UNTOC	United Nation Convention Against Transnational Organised Crime
USD	United States Dollars

Introduction

Stopping and stemming Illicit Financial Flows (IFFs) has been propelled to the very top of the global development agenda because of the negative impact of IFFs on development, governance, and the increasing security challenges it generates. The Report of the High-Level Panel on Illicit Financial Flows from Africa (the Mbeki Report) was instrumental in squarely placing IFFs on the global agenda, including the inclusion of IFFs in SDGs Goal 16 Target 4 which calls for significant reduction in IFFs by 2030. The Thabo Mbeki Report was specifically mentioned and incorporated in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

The cost of IFFs to the global economy is now well documented. About \$1.6 Trillion representing 2.7% of global GDP is lost through money laundering by criminals. Whilst between \$500b to \$600b is attributed to base erosion, profit shifting and money laundering via multinational corporations in tax havens. The Mbeki Report established the pressing need for Africa to track, stop and get African asset taken out through IFFs. It is now widely recognized and established that in order for Africa to be free from the shackles of underdevelopment and poverty and meet the Sustainability Development Goals and Agenda 2063, domestic resource mobilization is imperative and critical and this requires curtailment of IFFs from the continent.

The development of these Guidelines highlights the fact that success in advocacy matched by continuous research has helped to deepen understanding of the phenomenon of IFFs, its causes, facilitators, and how it can be stemmed. Policy

instruments and actions at domestic and international levels have also been harnessed. One key recommendation of the Report of the HLP is that African States should create avenues and mechanisms for information sharing and coordination among the various institutions and agencies of government responsible for preventing IFFs. This way we learn from each other and avoid common errors.

In Nigeria, the Inter-Agency Committee on Stopping IFFs from Nigeria was inaugurated on 3rd May, 2019 with membership drawn from the Presidency (OVP), ICPC, NFIU, EFCC, CBN, NDLEA, FMoF, FIRS, NBS, NCS, NEITI and other critical government agencies connected to regulation and investigation of illicit financial flows from the country. The Committee was tasked amongst other things to:

- Establish cooperation amongst relevant agencies and improve coordination and the exchange of information amongst them in order to substantially reduce and eventually eliminate illicit financial flows from Nigeria
- Promote the implementation of the recommendations in the Report of the High-Level Panel on Illicit Financial Flows from Africa (Mbeki Report) in the context of Nigeria, and
- Make recommendations to the Federal Government on required improvements in legislation, rules and processes for the purposes of tackling illicit financial flows from Nigeria

The Inter-Agency Committee on Illicit Financial Flows (IAC-IFF) has undertaken a range of activities, including capacity building to better appreciate nature and extent of IFFs in Nigeria as well share knowledge on how IFFs happen in sectors like oil and gas, education, real estate sector, and taxation.

The Guidelines for Private Sector Response to Stemming

IFFs in Nigeria was carefully drafted and put together by a team of professionals drawn from the Private Sector and coordinated by ICPC. This document is a product of rigorous and extensive consultation with key Stakeholders from the Private Sectors, and they are intended to provide guidance to private sector companies, particularly those in the following category or fitting the scope described as: Financial and Designated Non-Financial Institutions, Professional firms, large companies listed on any exchange, and companies involved in significant international transactions of any kind and in any sector of the economy.

We acknowledge that there are existing regulatory provisions requiring private sector compliance to enhance transparency and mitigate IFFs. Therefore, these guidelines are developed to serve as a roadmap for more effective interventions to curb IFF, we also intend to encourage enhanced private sector compliance and adherence to the existing regulatory requirements applicable to mitigate corruption, money laundering and IFF-related activities.

Prof. Bolaji Owasanoye, SAN, OFR
Chairman, ICPC
March 2023

Purpose

These Guidelines are issued by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in collaboration with other members of the Inter-Agency Committee on Illicit Financial Flows (herein-after IAC-IFF) as part of efforts to stem the resultant leakage in public resources due to illicit financial flows (IFFs) from Nigeria.

IFFs stem from commercial, criminal, and corrupt activities of private sector entities for which there are extant legislation¹ regulations² and codes such as the Corrupt Practices and Other Related Offences Act 2000 and Nigerian Code of Corporate Governance (NCCG) 2018 already in place to deal with aspects of the origination, transmission, and receipt of such financial flows, but essential gaps in implementation persist, which requires strategic and comprehensive interventions to stem IFFs.

The supervisory agencies acknowledge that there are existing regulatory provisions requiring private sector compliance to enhance transparency and mitigate IFFs. Therefore, in developing these guidelines as a roadmap for more effective interventions to curb IFF, the supervisory agencies intend to encourage enhanced private sector compliance and adherence to the existing regulatory requirements applicable to mitigate corruption, money laundering and IFF-related activities.

Where extant regulations are weak or do not sufficiently

¹The Money Laundering Act of 1995, The Money Laundering (Prohibition) Act 2004, The Advance Fee Fraud and Other Fraud Related Offences Act 1995, The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, The Banks and other Financial Institutions Act 1991, Miscellaneous Offences Act, 1985, The Criminal Code and the Penal Code and, Terrorism Act, 2011

²Other key regulations include the Nigerian Financial Intelligence Unit Act 2018, Economic and Financial Crimes Commission (Establishment Act) 2004, Code of Conduct Bureau and Tribunal Act 1991, Money Laundering (Prevention and Prohibition) Act 2022, Proceeds of Crime (Recovery and Management) Act 2022, and the Terrorism (Prevention and Prohibition) Act 2022.

cover an issue, these guidelines should be used to fill such gaps. In effect, compliance with already existing legal and regulatory provisions concerning business operations that relate to corruption, money laundering, and related activities that contribute to licit financial flows is a requirement of these guidelines. These shall provide supplementary regulatory guidelines that require additional voluntary disclosure obligations from the private sector where there are gaps in existing regulatory oversight.

Applicability

These guidelines provide guidance to private sector companies, particularly those in the following category or fitting the scope described as: Financial and Designated Non-Financial Institutions, Professional firms, large companies listed on any exchange, and companies involved in significant international transactions of any kind and in any sector of the economy.

Overview

Illicit Financial Flows (IFFs) strip countries of important and already scarce resources. They create significant barriers to sustainable development and impede the achievement of key milestones towards the Sustainable Development Goals (SDGs). In addition to the significant financial drain suffered by the Nigerian economy due to IFFs, it can also become a source of conflicts threatening peace, stability and security in the region.

Africa is reportedly losing up to \$86 billion annually to illicit financial flows according to the United Nations Conference on Trade and Development (UNCTAD). Yet, Africa has a \$200 billion estimated funding gap to reach its 2030 SDG milestones. It is understood that nefarious commercial activities of multinational companies, drug trafficking and smuggling, and bribery and embezzlement give rise to IFFs, but there is increasing focus on commercial activity contributing to IFFs.

Conservative estimates by Nigeria Extractive Industry Transparency Initiative (NEITI) indicates that Nigeria loses between \$15 billion and \$18 billion a year to IFFs in the extractive sector. These stem from the activities of both private and public sector institutions which involve bribery, corruption, and criminal and illicit activities related to regular commercial endeavours.

Certain private sector entities engage in over-invoicing or under-pricing trade deals, misuse transfer pricing (avoiding taxes by setting prices in trading between their divisions), misuse offshore banking and tax havens.”³

In 2011, the African Union and the United Nations Economic Commission for Africa set up a High-Level Panel (HLP) on Illicit Financial Flows (IFFs) from Africa,⁴ headed by H.E. Thabo Mbeki, former President of South Africa, which submitted their report in 2016.

A key recommendation of the HLP report placed the onus of combatting IFFs on gaining a concrete understanding of how IFFs occur in Africa and establishing “practical, realistic, short- to medium-term actions that should be taken both by Africa and by the rest of the world to effectively confront what is, in fact, a global challenge.

Existing literature acknowledges the inadequacy of available and applicable data on IFFs. Therefore, an important initial effort would focus on the methodical development of capacity to securely collect and analyze data to inform further concerted and collaborative action to stem IFFS. The approach taken in these guidelines is toward closing these gaps in Nigeria.

At the core of an effective approach to this end, is proactive inter-agency coordination as well as strategic cooperation with the private sector. Therefore, ICPC and other relevant

³Ighobor, K. (2016). "Mbeki panel ramps up war against illicit financial flows." *Africa Renewal*. Retrieved 18 Dec 2022, 2022, from <https://www.un.org/africarenewal/magazine/april-2016/mbeki-panel-ramps-war-against-illicit-financial-flows>
⁴UNECA (2015). "Illicit financial flows: report of the High-Level Panel on illicit financial flows from Africa." from <https://hdl.handle.net/10855/22695>

Agencies will prioritize public–private cooperations to strengthen the private sector's role in the effort to prevent (raise awareness and understanding of IFFs and how to mitigate them), detect (collect adequate data within the confines of privacy and other relevant laws and regulations), respond (develop evidence-based and well-informed agency action to curb IFFs), and evaluate (periodically evaluate the effectiveness of IFF intervention strategy). This is all with the aim of developing the National capacity to stem IFFs measurably.

The overall high-level approach, prescribed by these Guidelines, will consist of a set of provisions that strengthen the capacity of regulatory and supervisory agencies and the private sector, particularly those focused on the most vulnerable business sectors, to establish and follow the sequence of IFF assessment, prevention, detection, response, and evaluation, to improve the strategy and long-term response of Supervising Authorities.

Definitions and Scope

For the purpose of this document and the regulatory guidance to be introduced herein, IFFs shall relate to financial flows transferred out of the country's territorial physical borders or virtual oversight that is generated by criminal or illicit activity or is generated legitimately and then transferred by methods or practices that are illicit i.e in contravention of national or international laws.

In practice, Illicit Financial Flows are facilitated by a combination of actors in the private sector and enabled by weak financial intelligence surveillance and systemically corrupt conditions. The activities ranges from simple private individual transfer of funds into private accounts abroad without having paid taxes, to highly complex schemes involving criminal networks that set up multi-layered, multi-jurisdictional structures to hide ownership⁵. The result of

⁵Illicit Financial Flows from Developing Countries: Measuring OECD Responses – OECD 2014
- https://www.oecd.org/corruption/illicit_financial_flows_from_developing_countries.pdf

studies of IFFS in Africa indicate that IFFs stem from three broad groups of activities:

- Commercial (often illicit) activity
- Corruption
- Criminal activity

Commercial Activity

These often entail borderline illicit practices by legal entities, as well as organizational arrangements such as trusts, and individualized by transactions managed with a primary objective of concealing revenues and reducing tax burden through evading controls and regulations. Typically, these take two forms:

- **Illegal tax practices by commercial entities.** These include practices such as tariff, duty and revenue manipulation, tax evasion, market manipulation, violation of competition laws amongst others included in the ICCS. These can also involve manipulation of transfer pricing, strategic location of debt and intellectual property, tax treaty shopping and the use of hybrid instruments and entities. Commercial entities that engage in illicit tax practices often operate legitimate businesses. Therefore, the source of the finances is legitimate but the deliberate violation of a national law to evade paying taxes and then subsequent transfer of such company's profits out of the physical or virtual borders or oversight of the Nigerian regulatory system bring such funds within the definition of IFF. There will be a two-step effort required to document such funds as IFF – first the illicit activity connected with non-payment of taxes generated from legitimate commercial activity, then the transfer of such funds out of the country's physical or virtual oversight.
- **IFFs from aggressive tax avoidance.** Illicit flows can also be generated from legal economic activities through aggressive tax avoidance. Tax avoidance involves the use

of legal methods to reduce taxable income or tax owed. This can take place through claiming of allowed tax deductions, credits, and tax breaks but when they are aggressive, they can go beyond clearly defined borders of tax compliance. These flows need to be carefully considered, as tax avoidance on its own is often not a practice that contravenes national or international laws.

Corruption

The United Nations Convention against Corruption A/RES/58/4 identifies a broad range of criminal acts to be considered as corruption ranging from bribery, embezzlement, abuse of authority for personal gain, trading in influence, illicit enrichment, and other acts identified in the ICCS. These require cooperation with private entities to transfer the proceeds of corrupt activity out of the country. IFFs related to corruption take place when the economic returns from these corrupt acts, directly or indirectly, generate cross-border flows and when financial assets are transferred across borders in the committing or facilitation of these crimes or the enjoyment of the proceeds of these crimes.

Criminal Activity

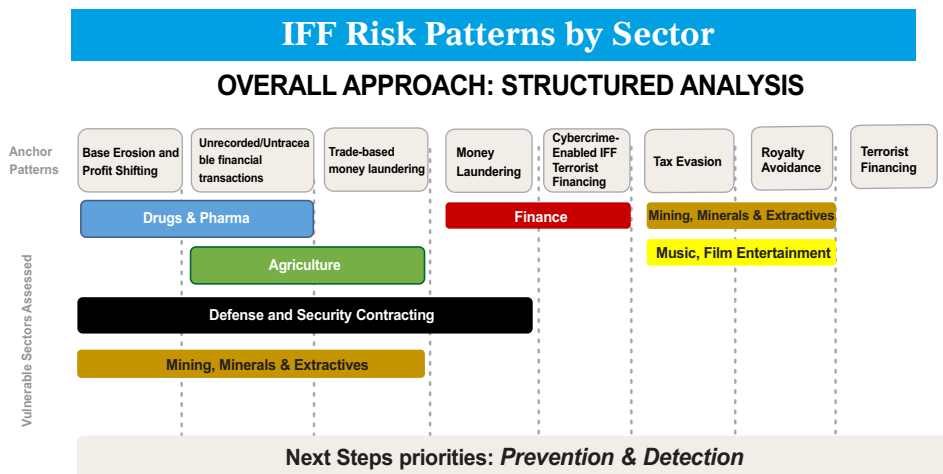
IFFs generated from criminal activity generally fit into two broad groups involving trade in illegal goods and services; and trade in exploitation-type of activities and financing of terrorism.

- **IFFs from illegal markets.** These include trade in illicit goods and services when the corresponding financial flows cross borders. The focus is on criminal activities where income is generated through the exchange (trade) of illegal goods or services. Such processes often involve a degree of criminal organization aimed at creating profit. They include any type of trafficking in goods, such as drugs and firearms, or services, such as smuggling of migrants. IFFs emerge

from transnational trade in illicit goods and services, as well as from cross-border flows from managing the illicit income from such activities.

- **IFFs from exploitation-type activities and financing of crime and terrorism.** Exploitation-type activities are illegal activities that entail a forced and/or involuntary transfer of economic resources between two actors. Examples include slavery and exploitation, extortion, trafficking in persons and kidnapping. In all such cases, the focus is on the financial benefit that an individual (or a group) gains by exploiting somebody else and/or depriving somebody of some of his/her assets. In addition, terrorism financing and financing of crime are illicit, voluntary transfers of funds between two actors with the purpose of funding criminal or terrorist actions. When the related financial flows cross country borders, they constitute IFFs.

The scope of IFFs covered by these Guidelines will include IFFs generated by legitimate and illicit commercial activities providing guidance from a risk-oriented approach. The guidelines will prioritize the risks of illicit outflow of value, revenue, resources, and finances from Nigeria to any other jurisdiction by sectors of the industry in Nigeria.



To further narrow this down for private sector use, the IAC-IFF consulted with private sector experts to develop a preliminary IFF risk map. Through this exercise, they identified eight (8) prevailing IFF patterns by industry/sector of the business environment in Nigeria. These patterns represent the risks or vulnerabilities to companies in the sectors that were included in the preliminary study. The IFF patterns and risk map is the first step in developing the risk-based approach that the supervisory agencies intend to apply in developing this supplementary regulatory regime to curb IFFs.

Risk-Based Approach

To effectively apply the interventions described in this guideline to your business operations, pay attention to the IFF pattern most prevalent in your company's sector or industry.

A risk-based approach means that the agencies as the competent authorities shall lead and collaborate with the private sector to identify, assess, and understand the IFF risk to which the private sector is exposed, and take the appropriate mitigation measures in accordance with the level of risk to collaboratively curb IFFs.

Following the identification of these risk patterns, the agencies have proposed interventions to Prevent, Detect, respond to the risk, and then evaluate the effectiveness of the response.

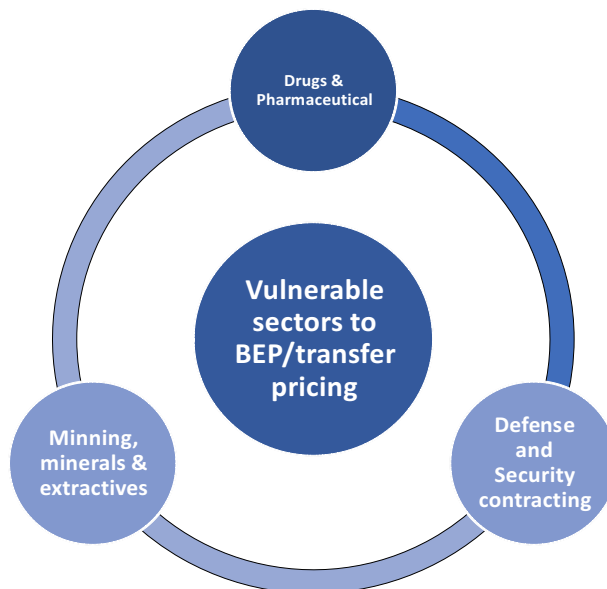
Base Erosion And Profit Shifting (BEPS) (Commercial Activity):

These are linked to IFFs stemming from legitimate commercial activity and can fall into tax evasion or aggressive tax avoidance. Base erosion is the use of financial measures and tax planning strategies to reduce a company's taxable profit in a country. In Nigeria, it is often achieved when companies structure their income to have more favourable tax treatment or find ways to write-off certain expenditure

against taxable income. Profit shifting involves companies with subsidiaries in other jurisdictions and refers to making payments to other group companies to move profits from high- tax jurisdictions to low tax regimes. It is otherwise known as “intra group payments” which take the form of interest payments as the expenses can be deducted from pre-tax profits.

The prevalence of BEP and transfer pricing in Africa disproportionately affects the development of these countries such as Nigeria which has a higher reliance on corporate income tax to fund economic and development objectives. BEPS practices cost countries USD 100-240 billion in lost revenue annually.⁶ Although base erosion can give companies a competitive edge, it often falls within the IFF scope making it illegal.

Recognizing the impact on development, the Organisation for Economic Cooperation and Development (OECD) /G20 BEPS Project developed Base Erosion and Profit Shifting (BEPS) actions known as the 15 BEPS actions to equip governments



⁶OECD, “What is BEPS?” - <https://www.oecd.org/tax/beps/about/>

with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created.

Action 15 refers to the Multilateral Instrument which offers concrete solutions for governments to close loopholes in international tax treaties by transposing results from the BEPS Project into bilateral tax treaties worldwide. The MLI allows governments to implement agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

Nigeria signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting in 2017. The MLI is a single agreement between many countries. It allows a country to make concurrent changes to all or some of the Double Taxation Agreements (DTA) that it has with other countries. Nigeria has also submitted its MLI position. This means that proposed changes to the country's 19 DTAs can easily be tracked and known.

Tax Evasion

Tax evasion could be confused with tax avoidance, but the fundamental difference is that the former is always unlawful, and the latter is often lawful. Tax evasion involves a much broader range of illegal practices than base erosion and transfer pricing with the aim of hiding taxable income from tax authorities in order to avoid paying taxes that are due.

Tax evasion is the illegal non-payment or under-payment of taxes, usually by deliberately making a false declaration or no declaration to tax authorities – such as by declaring less income, profits or gains than the amounts actually earned, or by overstating deductions. It entails criminal or civil legal penalties.

Tax experts note that the most common form of tax evasion in Nigeria is through the failure to render annual returns to relevant authorities to get properly assessed. Further, the reasons may range from lack of awareness, a perception of poor management and misuse of tax collected, lack of essence of civic responsibility and taxpayer inaccessibility to government services, complexity of tax laws, and computation methods.

The Nigerian government continues its improvements to the tax systems by addressing these gaps in access, capacity, trust, and efficiency to reduce and thereby curb IFFs. Therefore, private sector collaboration through compliance and advocacy helps achieve these shared objectives.



Royalty Evasion

Royalty, in this context refers to the fee imposed by, and payable to the holder of the rights to intellectual property or minerals which are being extracted from the land and sold to the markets. The royalty rate is determined by the amount of minerals produced or paid for the exploration right to mine crude oil and precious minerals or by and IP contract. In 2019,

the Revenue Mobilisation Allocation and Fiscal Commission flagged that up to twenty-five (25) mining companies had no record of royalty payment to the tune of N482 million while up to six mining companies fail to comply with the 2020 audit by the Nigerian Extractive Industry Transparency Initiative (NEITI).

The most common way to evade paying royalties in the mining sector in violation of the national and international laws and treaties is by failing to comply with audits or misrepresentation, under representation and under declaration of productions to have royalties properly assessed. Another way of evading royalty payment includes extending exploration agreements while the company has already engaged in downstream operations taking minerals to the market.



With regards to intellectual property, the royalty rights are often set by contractual agreements between entities or individuals. The evasion of royalties for IP developed and protected under Nigeria laws commonly occurs when the IP is used to create derivative products the consumption of which

generates profits globally via the internet without remittance to the entities or individuals who own the IP right.

Royalty evasion in both the entertainment and extractives industries are enabled by weak oversight regimes and systemic corruption, collusion, and coercion between private and public sector actors.

Trade-based Money Laundering (TBML)

Trade based money laundering (TBML) is kind of money laundering associated with trade and tax evasion. The World Economic Forum estimates that TBML contributed to almost \$9 trillion in losses between 2008 and 2017 and tackling it is quite complicated because it leverages existing channels of cross-jurisdiction trade, involves frequent operations managed by complex logistics of multinational companies, and passes globalized trade pathways designed for speed and efficiency.

At a firm level, TBML is the process of disguising the proceeds of crime or illicit activities through the international trade system. It involves moving value from one country to another through trade transactions in an attempt to legitimise the illegal origin of that value.

To achieve these, criminal actors and facilitator undervalue or overvalue goods inserted into the trade system. This typically involves mis invoicing; under invoicing or over invoicing to move value from one country to another.

This allows organised criminals mask the illicit source of wealth, transfer them through trade channels to another jurisdiction where they can benefit from the proceeds of their crime. It also allows companies under value and under declare goods exported or imported to gain tax advantages.

These transactions are more difficult to trace and track and often involves facilitators who may not be aware of the crime

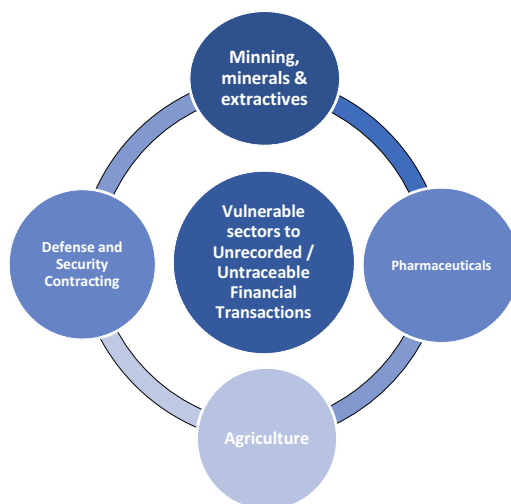


Unrecorded/untraceable Financial Transactions

This consists of any method of transacting or transferring money within or across jurisdictions that exists and occurs outside the formal banking system. They could be trade based on tech based. This presents a risk more than a pattern of IFF unless it is deliberate to evade traceability.

The Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) which is the Financial Actions Task Force (FATF) styled body in the sub region conducted a study on the vulnerability of west African nations to money laundering and terrorist financing due to cash transactions. The report found that 75% of respondents in the surveys conducted large transactions in cash. The report shared typologies of transfer of proceeds of crime out of countries due to the reliance of cash-based transactions in various sectors. The techniques often involved the use of a legitimate business as a front for money laundering and criminal activities.

The tech based untraceable transactions are becoming increasingly possible by the use of tech applications or virtual currency assets. What characterizes the transaction as



anonymous is the fact that the sender cannot actually know who sent the funds; the app will keep record of the transaction in case the need for using it arises. This helps prevent fraudulent transactions on the platform, but the identity of the sender is untraceable.

The sectors vulnerable to this includes entities that have a large network of third-party suppliers who operate in the informal or quasi formal sector and need to maintain cash transactions for day-to-day operations or cross border transactions. Otherwise, choice of using unrecorded and untraceable payment methods is always a red flag.

Money Laundering

The laws and regulations prohibiting and mitigating money laundering are far more advanced and apply to financial institutions and designated non-financial institutions. These regulations are designed to prevent crimes related to money laundering and terrorist financing and to ultimately avert the prosecution of offenders. However, in this break down, we have separated money laundering from terrorist financing to enable companies understand what to focus on in applying the interventions prescribed below.

Money laundering is the process of illegally concealing the origin of money obtained from illicit activities to make them appear to have originated from legitimate sources and make them useable in the financial system.

The most vulnerable sector to money laundering from the preliminary mapping exercise is the financial sector. However, these guidelines recognize the growing body of research from the FATF and other institutions designating additional private sector organizations as designated non-financial institutions due to their vulnerability. The guidelines also commend the private sector to NFIU regulations as issued from time to time.

Cybercrime-enabled IFFs:

Cyber-enabled IFFs are traditional crimes, which can be increased in their scale or reach by use of computers, computer networks or other forms of information communications technology (ICT). Unlike cyber-dependent crimes, they can be committed without the use of ICT. The most widely published instances of cyber-enabled crime relate to fraud and theft, i.e., electronic financial frauds, online romance, phishing scams⁷, mass-marketing frauds, and consumer scams. A common typology of these are crimes popularly branded “419” involving a coordinated group of individuals and organizations that implement fraudulent schemes leveraging both legitimate and traceable and illegitimate and untraceable channels. In this regard, they also qualify as organised crime under UNTOC.

The most vulnerable sector to money laundering from the preliminary mapping exercise is the financial sector.

Terrorist Financing:

Encompasses the means and methods used by terrorist organisations to finance their activities. Such financing can

⁷UK Home Office, “Cybercrime: A review of the evidence Research Report 75 - Chapter 2: Cyber-enabled crimes -fraud and theft” (October 2013) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248621/horr75-chap2.pdf

come from legitimate sources, for example from business profits and charitable organizations, or from illegal activities including trafficking in weapons, drugs or people, or kidnapping⁸.

Under these Guidelines, the approach to combatting IFFs involves the identification and separation, as necessary, of the main sources and channels of IFFs and providing guidance for national and international actions and interventions to be used by the private sector to target them. An important outcome of this approach would be ability to disaggregate IFFs that are currently from legal activities from those that are not.

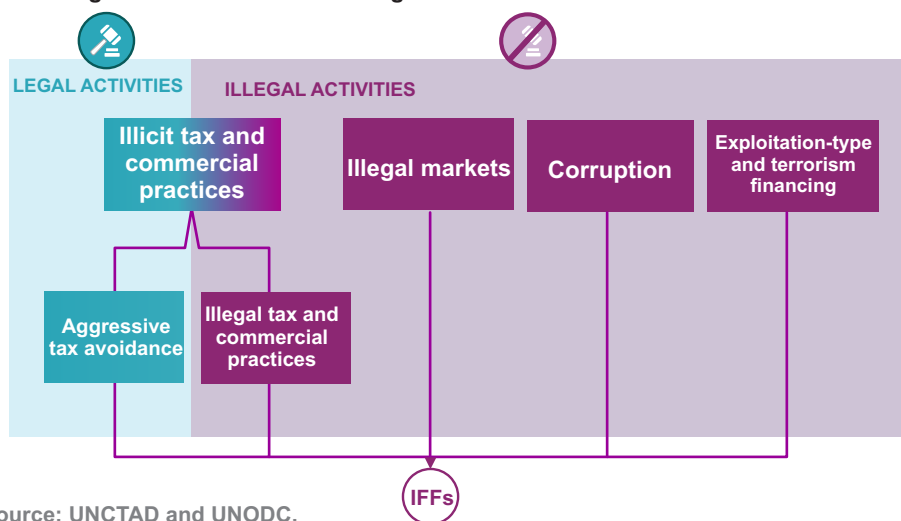
No sectors were identified as vulnerable in this mapping exercise although the financial services sector would appear to have a higher risk.

⁸UNODC, "Combating Terrorist Financing" <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html#:~:text=Terrorist%20financing%20encompasses%20the%20means,drugs%20or%20people%2C%20or%20kidnapping.>

Sector and Vulnerability Assessment

The framework approach in these Guidelines is intended to classify IFFs from various angles that cover sources, channels, impacts, actors involved and motives. In effect, the approach prioritises tracing and identifying the underlying activities that generate IFFs rather than a focus on the IFFs themselves⁹. This is important because research suggests that 65 per cent of IFFs come from legitimate commercial activities, 30 per cent from criminal activities, and 5 per cent from corruption (UNECA 2015).

Figure 1: Categories of activities that generate illicit financial flows

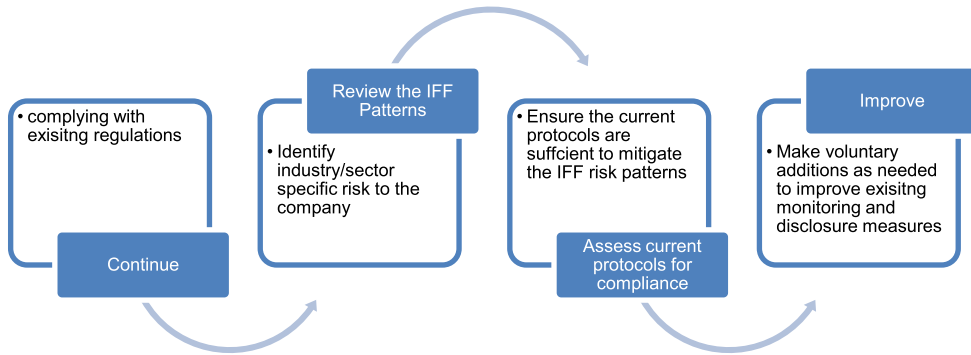


Source: UNCTAD and UNODC.

The interventions below are crafted for private sector entities to apply after they assess the direct or indirect vulnerability to the identified IFF patterns by sector. The first step requires them to understand the IFF patterns applicable to their sector then take steps to monitor the risk and vulnerability of their company's operations.

⁹UNODC, UNCTAD, "Conceptual Framework for The Statistical Measurement of Illicit Financial Flows". (October 2020). https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_FINAL.pdf

The leaders of every company should follow these steps in applying the interventions to contribute to the effort of this exercise; to curb IFFS



Interventions

Prevention Framework

Risk Management Structure:

In line with the Guidelines for Developing Risk Management Framework in Banks¹⁰ published by the Central Bank of Nigeria in 2020 for Financial Institutions and Designated Non-Financial Institutions and Professional firms applicable to all large companies, and any company involved with cross-border transactions of any kind, in any sector of the economy vulnerable to IFFs, all Enterprises shall establish, strengthen, and resource their Risk Management Structures at the Board and Executive Management levels and ensure that individuals with the appropriate skills, competence, and experience 1) perform the risk oversight function, and 2) implement the systems and procedures for periodic risk identification, measurement, monitoring, reporting and control.

- a. The Risk Management Structure established to prevent IFFs alongside other business-related risks should be commensurate with the size, complexity, and diversity of each Enterprise's activities.
- b. The Risk Management Structure in place must be robust and practical to the extent that it enables those responsible for risk management to regularly identify and highlight at regular risk meetings transactions, business activities, or partnerships that are likely to be vulnerable to IFFs, estimate the potential risk implication(s) for the Entities concerned, and recommend the appropriate due diligence or approval processes required to avoid IFF-related risks.

¹⁰Central Bank of Nigeria - Guidelines for Developing Risk Management Framework for Individual Risk Elements in Banks"
<https://www.cbn.gov.ng/OUT/CIRCULARS/BS/2007/GUIDELINES%20FOR%20INDIVIDUAL%20RISK%20ELEMENTS%20SEPT%202007C.PDF>

Prevention Framework: Compliance Improvement Measures For Companies

Tone-at-the-Top

Companies preventing IFFs will voluntarily demonstrate their commitment to this in the following ways:

- i. Publish a CEO Statement of Commitment: CEOs will publish a statement with the authority of the board of directors on the company's website affirming the company's commitment towards identifying, responding to, and preventing IFFs.
- ii. This publication shall be shared with the ICPC and IAC-IFF Agencies by email or post on an annual basis and agencies may maintain a public list of companies and CEOs who have made such public statements.

Customer Due Diligence (CDD)/Enhanced Due Diligence

Entities should establish a framework that provides clear and binding CDD processes and obligations on their clients as part of AML/CFT requirements to:

- a. Identify the beneficial owners of their business following a methodology aligned with the FATF Recommendations, the EOIR standard and in accordance with Companies and Allied Matters Act, 2020..
- b. Verify the identity and accuracy of the beneficial ownership information.
- c. Regularly update the information on beneficial ownership.
- d. Constantly verify the beneficial ownership information and update as soon as the AML/CFT obliged entity has any doubt about the accuracy of the current information or has knowledge of any events that may affect it (e.g. change of shareholders).

- e. Regularly comply with CAC regulations and standards on beneficial ownership.

Capacity Building

Entities shall produce an annual training plan which is resourced as part of the capacity building requirement for officials that manage risks related to IFFs. The training curriculum should cover at least the following:

- a. An unpacking of the CEO statement of commitment
- b. Identification of how this could occur in the operations and value/supply chains of the company.
- c. Identification of who would currently benefit from IFFs continuing.
- d. Development of alternative strategies to meet their legitimate needs.
- e. Communication of how refraining from IFFs will be of benefit to stakeholders and Nigeria as a nation
- f. Training on how to use and independent whistle-blower platform
- g. Inclusion of a statement on this training in the annual report and CAC annual returns
- h. Codification of communications into the training programme for staff
- i. Deployment and training of all staff, at least twice a year
- j. All companies to which these guidelines are applicable may voluntarily submit a training report detailing the internal capacity of the organisation to manage IFFs-related risks to the ICPC and IAC-IFF Agencies and publish same on their websites.

Detection Framework

The capacity to track, detect and respond to IFFs is central to the purpose and intentions of these Guidelines.

The priority will be for all Entities vulnerable to IFFs to collect data that is accurate and reflects the complexity and scope of the challenges they face which relate to IFFs. This will require all Entities to institute a safe zone, leniency and confidential reporting programmes, cyber security systems to protect data, and safe periods or amnesty periods to encourage reporting.

The overall goal here is efficient, secure, abuse-proof trustworthy data collection, analysis, and tracking to provide concrete data about IFFs. Key components of the responsibilities on Entities under this Guidelines include:

Detection Framework: Strengthened Internal Reporting

Companies should ensure that the internal control systems have these basic transaction monitoring and escalation features: Transaction thresholds for recording and conducting enhanced scrutiny:

- a) **Reporting Threshold.** Companies should ensure that transaction over a certain threshold are scrutinized to mitigate the risk of illicit activity.
- b) **CFOs sign off that they conducted a risk assessment** of IFF risk following the vulnerability patterns identified and they have implemented appropriate measures to mitigate IFF in the internal controls of the company. This declaration should accompany the CEO statement noted in the prevention framework.
- c) **Institute a Whistleblowing Management System,** designed to receive and handle reports, whether actual or potential, established or reasonably suspected,

particularly for Entities in sectors most vulnerable to IFFs. It is paramount that there is trust in the Whistleblowing Management System, and that Entities do not tolerate any form of retaliation. A prohibition on retaliation should be included in each Entity's Code of Conduct or other relevant Integrity Standard or Policy. Entities must respond swiftly and publicly to allegations and potential violations that relate to IFFs.

- d) Compliance Monitoring and Auditing:** To keep improving the IFF risk management programme, risk areas need to be consistently monitored and audited. Entities shall therefore introduce and maintain an auditing and monitoring plan, with clear timelines for periodic risk assessments and compliance reviews, and with specific roles for the Board, Executive Management, Internal Audit and Internal Controls, as well as any other relevant official responsible for Compliance.
- e) Voluntary annual certification of controls** by a third-party like external auditor is incentivized. As far as is possible, a company may conduct as part of its mandatory annual audit process, an objective independent audit and certification of the processes, standards, and system for detecting, responding and preventing IFFs.

Response Framework

All companies shall keep evidence and document cases of IFFs within the entity to ensure effective control and tracking of cases; effective reporting to relevant IAC-IFF Agencies; to set precedence for future cases; for measuring progress made; for learning from mistakes; and, for catching trends for more sophisticated detection and prevention.

Companies will cause data and evidence on individual cases to be kept, inclusive of the corrective actions taken, analysis of the root causes and how resolution was communicated.

The company shall make voluntary annual disclosures of

analysed cases numbers and trends to participate in the incentive scheme outlined below.

Prevention Detection And Response Framework: Measures By IAC-IFF Agencies To Enable Compliance

Standard Operating Procedures (SOPs)

All entities shall publish transparent and consistent SOPs targeted at staff, third party vendors, and business partners that relate to process(es) that govern national and trans-border transactions, business activities, or partnerships vulnerable to IFFs to avoid opacity and abuse of process.

Value Placed on Private Sector Cooperation

All entities meeting the criteria below will qualify for 1.) fast-track, priority government regulated service or benefit on the recommendation of IAC-IFF member or the ICPC. for legitimate, transparent, cross-border transactions and, 2.) leniency in the unfortunate situation that the entity is indicted for perpetrating IFFs, in exchange for

- a. Certification of their Training curriculum
- b. Voluntary annual certification of internal anti-IFF controls
- C. Voluntary annual disclosures of Whistle-blower reports, and analysed and anonymized reported cases of IFFs

Expected Outcomes

Adherence by corporate entities to these guidelines will lead to

1. Greater awareness of IFFs
2. Active internal education of company staff, value chain and supply chain actors
3. More IFF prevention activity
4. Increased compliance by the Private Sector
5. Clear compliance incentives
6. Availability of more reliable data on types and manner of IFFs in Nigeria

Evaluation Plan

1. **Metrics and Benchmarks:** Entities are encouraged to introduce an iterative process essential to monitoring the performance of risk systems intended to curb IFFs. The benchmarking process developed by Entities should make it possible to assess current risk systems, identify process gaps, and determine continuous improvement measures that reflect the need to adapt the risk system in place to match contextual realities which may lead to changes to business processes.
2. **Company policies, practices and procedures:** Companies are encouraged to develop internal policies or guidelines that set out the procedures and internal practices necessary for identifying, reporting, preventing and escalating cases of IFFs

- 3. Analysis of Voluntary Actions and Submitted Reports**
- 4. Cooperation and exchange of information:** Entities with multi-jurisdictional operations should share information with subsidiaries, international third-party partners, shareholders, and supervisory authorities in other jurisdictions where possible regarding risks that relate to IFFs. Sharing of such information could take place on a bilateral or multilateral basis, using data obtained from the risk reports, annual surveys, etc. Information shared could include any impediments to the supervision / oversight process for IFFs, rules/criteria for evaluating IFF risks and organisational responses, and examples of good practice observed in managing such risks.
- 5. Overall System Improvements:** Annual reports produced from cases of IFFs should be reviewed on an annual or bi-annual basis by the Risk Committee of the Board and Executive Management (led by Internal Audit Function) with a view to evaluating vulnerabilities and adaptations of risk, system response to the risks, and relevant updates to ensure system improvements and fit-for purpose to tackle the risks of IFFs

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