WHY LEGAL DUE DILIGENCE IS THE WEAKEST LINK IN SIERRA LEONE'S BANKING COMPLIANCE CHAIN

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1. INTRODUCTION: THE HIDDEN RISKS BEHIND THE FORMS

Imagine a newly registered real estate and property development company walks into a bank in Freetown, led by a young man who introduces himself as the managing director. His documents are pristine: certificate of incorporation, tax identification, board resolution, utility bill, and two ID cards. Within seven working days, the bank opens the account. Months later, the bank is contacted by financial intelligence officers in Ghana: the account has been used to funnel over $400,000 across borders. Digging deeper, the real owner of the company is traced to a senior government official's brother - a politically exposed person (PEP) who deliberately hid behind proxy names to avoid detection. The bank now faces scrutiny for failing to flag the risk. We call this "the politically connected ghost owner".

Imagine also, a small construction company opens an account at a regional bank branch in Bo. The representative claims the company has just won a government road contract in Kenema. The documents check out - all appear recent and clean. The bank opens the account and even offers the company a credit facility. Three months later, the account goes dormant after multiple deposits and quick withdrawals. It turns out the contract never existed. The entire company was a front to launder stolen public funds. The directors cannot be traced. The bank is left with a major loss and reputational damage. The vanishing construction firm at play.

Furthermore, imagine where a single mother running a small tailoring business in Kono is approached by a well-dressed man claiming to be an investor from Europe. He says he wants to open a business in Sierra Leone but needs "a local face" to help with registration and banking. In exchange, she'll receive a generous monthly stipend. She agrees. Her name is used to register the company and open the business account. The bank accepts the documents without asking further questions about ownership or control. Weeks later, the account is flagged for suspicious international wire transfers linked to romance scams targeting foreign victims. When questioned, the woman admits she never saw or controlled the money - she was only a face. But the account is in her name, the innocent front woman, and now she is under investigation.

Stretching a bit further, think of a situation where a man claiming to be the director of a logistics and haulage company walks into a bank in Makeni with all the right documents. He speaks confidently and dresses professionally. The bank opens the account after collecting the standard paperwork.

Unbeknownst to the staff, the same individual has opened four other business accounts in Freetown and Port Loko using slightly different names, each tied to different company registrations. These accounts are later discovered to be part of a donor fund diversion scheme, where money meant for rural water supply projects was siphoned off through multiple fake businesses. The banks had no shared alert system and did not verify cross-bank activity. The multiple identity man has played a circus trick, resulting in the damage running into hundreds of millions of Leones.

In all four cases, the problem wasn't the documents - it was the failure to ask the right legal questions. From Freetown to Kono, across corporate desks and compliance units, many banks in Sierra Leone continue to treat account opening for business clients as a document collection exercise, not a legal risk assessment. Yet behind every company or business enterprise registration, there may be hidden owners, criminal actors, or politically exposed beneficiaries waiting to exploit the system.

This article explores why legal due diligence is the most overlooked but essential step in Sierra Leone's banking compliance process - and why treating it casually is exposing the entire financial system to serious risk.

2. WHAT IS LEGAL DUE DILIGENCE IN BANKING?

Legal due diligence in banking is a critical compliance process that goes beyond document collection. It refers to the legal verification and risk assessment a bank must undertake to understand who a client truly is, how the client is structured, and whether that client poses a legal, regulatory, or reputational risk.

In Sierra Leone, this process is guided by domestic laws and international obligations, including but not limited to the Bank of Sierra Leone Act 2019, the Banking Act 2019, the Anti-Money Laundering and Combating of Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/PF) Act 2024, and directives from the Bank of Sierra Leone (BSL) and the Financial Intelligence Agency (FIA). Before opening a business account, banks are expected to legally verify:

(i) The company's incorporation and status through the records of Corporate Affairs Commission (CAC), now transitioned to the National Investment Board (NIB). For instance, an inactive or struck-off company should not be allowed to operate a live business account.

(ii) Beneficial ownership, not just listed directors. A company may have legal directors on paper, but real control could lie with hidden actors - sometimes foreign nationals or politically exposed persons (PEPs). To put simply, if a mining company lists a nominee director but the real funder is a politically exposed individual in Guinea, that triggers enhanced due diligence under the AML/CFT/PF regime.

(iii) Regulatory compliance - Does the business require a license to

operate? If so, is the license valid and issued by the relevant regulator (e.g., NATCOM for telecoms, NRA for bonded warehouses, EPA for environmental permits)?

(iv) The legitimacy of the source of funds. A bank cannot rely solely on statements like "contract proceeds" or "consultancy income." In a recent FIA advisory, a company claiming to offer "training services" had no physical address, no clients, and no tax filing history, yet moved over Le2 billion through its account in under six months, all unverified.

(v) KYC, AML, and CFT alignments. Legal due diligence ensures that banks apply Know Your Customer policies properly, including flagging shell companies, cross-checking identities against PEP and sanctions lists, and ensuring the Customer Due Diligence (CDD) tiering (low, medium or high) matches the risk.

In summary, legal due diligence is not a luxury or formality, it is the firewall between financial integrity and exploitation. Where this process is weak, the entire banking ecosystem is exposed to fraud, corruption, and international sanctions.

3. THE DISCONNECT BETWEEN LAW AND PRACTICE

Sierra Leone is not lacking legal rules. The Companies Act 2009, Anti-Money Laundering and Combating of Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/FT Act 2024), and the Bank of Sierra Leone's prudential and compliance guidelines together lay a robust foundation for corporate onboarding and financial regulation. In theory, these laws require banks to verify companies thoroughly, ensure proper governance, identify beneficial ownership, and comply with KYC, AML, and CFT protocols. But in reality, the enforcement and implementation of these laws lag far behind.

To start with, account officers frequently operate with the mindset: "if the documents look real, proceed." A clean certificate of incorporation from CAC, a recent tax clearance, and director IDs are often presumed to be sufficient evidence. No further inquiry - no verification of ownership networks, no cross-referencing against PEP registries, no follow-up on suspicious fund sources. This superficial handling or **the box ticking culture** (as I would put it) persists despite **FATF** (Financial Action Task Force) and **GIABA** (Governmental Action Group against Money Laundering in West Africa) follow-up assessments holding customer due diligence (Recommendation 10) and politically exposed person's identification (Recommendation 12) as only largely compliant in Sierra Leone, rather than fully robust systems.

Secondly, without a public **beneficial ownership register**, verifying who truly controls the company is nearly impossible. While Sierra Leone committed to beneficial ownership transparency in extractive industries under **EITI** (Extractive Industries Transparency Initiative), the country still lacks a

comprehensive beneficial Ownership register - even in sectors like mining, only major firms disclose ownership, and the data is largely inaccessible to the public. Meanwhile, the Companies Act 2009 only requires disclosure of beneficial interest for public companies exceeding certain thresholds - meaning many corporate clients do not report detailed ownership information at all.

Furthermore, legal and compliance teams often enter the process only after significant exposure, or when alerted by a regulator or security concern. Instead of being involved at the account-opening stage, legal professionals are called in when a red flag has already tripped. This reactive approach undermines the preventive intent of due diligence rules. This I refer to as “the too late to involve the legal team dilemma”.

Moreover, the Bank of Sierra Leone Act and Banking Act provide supervisory powers, but implementation gaps persist. Reports from the IMF and World Bank note that compliance guidelines and regulations exist in law, but lack detailed supervisory manuals, trained inspectors, and consistent enforcement.

Similarly, also, the Financial Intelligence Unit (FIU) - now reformed as the independent Financial Intelligence Agency (FIA), offers guidance and training, but regulatory fatigue, limited funding, and institutional inertia still hinder its effectiveness.

To conclude, these gaps aren’t theoretical. In practice, banks have accepted fronted company directors or shell firms, enabling fraud, laundering, or misused donor funds, as illustrated in real-life tales (e.g., phantom construction companies, proxy directors, multi-account schemes). While formal case studies remain scarce, the patterns align with reports of illicit financial flows and pervasive corruption in corporate governance settings.

4. HOW SIERRA LEONE’S LEGAL SYSTEM HANDLES DUE DILIGENCE

While much of banking regulation revolves around statutes and agency guidelines, courts shape legal interpretation and set practical precedents. Though Sierra Leonean case law directly involving AML or due diligence remains limited, several decisions offer insight into how courts view regulatory enforcement, institutional responsibility, and liability.

In **Jibao Micheal Flee v Bank of Sierra Leone (2023),** the High Court emphasized institutional independence and accountability. The judge underscored that BSL board members and staff must act without external influence and uphold transparent operational standards in exercising regulatory responsibilities. Though the case wasn’t about AML specifically, it reinforces the legal expectation that regulatory bodies must enforce compliance robustly - including due diligence.

In **Christopher Peacock v Sierra Leone Commercial Bank (2018)**, the court addressed whether the plaintiff exercised due diligence in urging the bank to fulfill its contract obligations. The case illustrated that courts expect active and timely efforts from both parties to uphold their contractual duties even when internal resistance or non-cooperation occurs. While not an AML dispute, the decision highlights that courts will hold institutions accountable for neglecting clear procedural obligations, potentially including legal due diligence norms.

The Court of Appeal's reasoning in **AML (UK) v Sierra Leone Police** (a human rights case) reinforced that negligence or failure to act does not always translate to liability unless a recognized duty arises. Courts require concrete institutional duty and causation before imposing liability. This aligns with due diligence expectations - banks and regulators must have clear mandates to enforce legal KYC/AML steps.

The question that comes to mind now is: what hasn't been litigated yet? No known Sierra Leonean court has directly ruled on a bank's failure to conduct AML due diligence leading to financial crime or sanctions. Nor has there been litigation over banks that ignored beneficial ownership rules or failed to report suspicious activity. This absence highlights a reckoning gap: There's no tested judicial route holding banks accountable for poor legal vetting. The absence equally highlights a space for legal accountability reforms. As Sierra Leone's 2024 AML/CFT/PF Act and Financial Intelligence Agency are already operational, future cases could test legal liability and due diligence standards.

5. THE GROWING RISKS: FRAUD, REPUTATION, AND SANCTIONS

When banks fail to conduct robust legal due diligence on corporate clients, they expose themselves to a cascade of existential threats. These range from criminal liability and reputational loss to regulatory sanctions and the severing of correspondent banking ties, essential for cross-border financial access.

(a) Legal Liability

A bank that opens and maintains accounts for corporate clients used to launder money or finance illicit activities can face criminal prosecution, hefty fines, or administrative penalties. International precedents are stark, let me highlight a few:

(i) Barclays was fined approximately £39 million ($52 million) by UK regulators in 2025 for failing to detect red flags in a relationship with a gold trading firm linked to international money laundering.

(ii) Credit Suisse (was Switzerland's largest and most prominent banks founded in 1856) repeatedly maintained accounts for convicted criminals and corrupt politicians over years, despite available compliance data, a failure widely exposed by the Suisse Secrets leak. Because of this, it no longer operates as an independent bank.

Banks in Sierra Leone risk similar scrutiny if allegations emerge that they allowed front companies or proxy accounts to move illicit funds. The newly enacted AML/CFT/PF Act 2024 and the independent Financial Intelligence Agency (FIA) now carry strong **investigative and prosecutorial powers**, making compliance negligence a legal duty to avoid.

(b) Reputational Damage

Reputation is the backbone of banking credibility. Even a single scandal such as a client fraud involving state funds or donor financing can damage trust in ways that take years to rebuild. In Sierra Leone, a high-profile case involved Le 40 billion (approx. USD 9.3 million) in fraud enacted by a client in collusion with bank staff, seriously undermining public confidence in the commercial banking sector. This, most would argue to be the reason why fraudulent activities are not publicly announced, to mitigate the face damage of the institution. Similarly, investigations by civil society, including **CHRDI** (Campaign for Human Rights and Development International), document widespread corruption attributed to **poor due diligence** practices particularly around politically exposed persons and misuse of state funds. When these happen, the end product is mostly striking reputational damage.

(c) Regulatory Sanctions

Regulators; including the Bank of Sierra Leone and the FIA now wield stronger enforcement tools. Banks failing to report suspicious transactions or lacking proper legal vetting procedures can face: Fines, license restrictions, or outright revocation of operating permits. Mandatory compliance reforms, independent oversight, or reputational blacklisting.

At the international level, correspondent banks and foreign regulators monitor such behaviors closely. As one global study warns, “respondent banks” face termination of correspondent accounts or “de-risking” if their AML/CFT standards are weak, even if they operate in low-risk sectors.

(d) Loss of Correspondent Banking Relationships

Nearly 77% of Sierra Leonean banks lost at least one correspondent relationship between 2012 and 2016 due to global banking concerns over weak AML/CFT compliance. The consequences include but not limited to: the inability to process cross-border payments or trade financing; higher transaction costs and reduced access to foreign remittances; and the isolation from international financial systems and foreign investment flows.

Without proper legal due diligence, banks risk membership in international networks unraveling overnight.

In summary: Sierra Leone’s integration into the global financial system makes these risks real, not hypothetical. Poor legal due diligence isn't just an internal compliance case, it's a vulnerability that can sever banks from the very

networks they rely on.

6. WHY LAWYERS MATTER IN THE BANKING DUE DILIGENCE PROCESS

In the architecture of modern banking, lawyers play a critical - yet often undervalued role in due diligence. Their work lies at the intersection of regulatory compliance, risk management, corporate governance, and institutional integrity. Due diligence is not just about ticking off documents; it's about protecting the bank from legal, reputational, regulatory, and financial exposure. This is where legal expertise becomes indispensable.

(a) The Legal Mindset: Beyond Document Verification

Lawyers are trained not just to verify documents, but to interrogate them. For instance:

A certificate of incorporation may appear genuine, but a lawyer would probe whether the issuing entity has the **statutory capacity** to do so (per the Companies Act 2009).

When reviewing memoranda and articles of association, lawyers assess **restrictive clauses** that could limit a company's capacity to engage in banking transactions such as borrowing, asset disposal, or third-party guarantees.

In cases of **trusts, NGOs, or shell entities**, lawyers are uniquely positioned to trace beneficial ownership, understand fiduciary relationships, and challenge irregular governance.

Lawyers are also pivotal in **identifying inconsistencies**, for example: when a land transport business shows large foreign inflows without matching trade activity, a legal mind questions potential breaches of the Anti-Money Laundering and Combating of Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction (AML/CFT/FT Act 2024). Also, when a **politically exposed person (PEP)** uses proxies or layers of companies to disguise interests, lawyers are essential in **untangling that web**.

(b) Legal Responsibilities Under the Law

In Sierra Leone, due diligence is not just a best practice - it is enshrined in law and regulation, including:

- Section 36 of the AML/CFT/PF Act 2024, which mandates customer due diligence (CDD) before establishing any business relationship.
- KYC and Enhanced Due Diligence (EDD) requirements issued by the Bank of Sierra Leone for higher-risk clients, including foreign entities, PEPs, or high-volume cash businesses.
- Data disclosure and legal liability provisions which implicate banks if they negligently or knowingly facilitate financial crime.

Only legally trained professionals can navigate the grey zones, advise on liability exposure, or evaluate when onboarding a client may trigger legal

reporting obligations to the Financial Intelligence Unit (FIU).

(c) The Institutional Gaps: When Lawyers Are Ignored

Despite their centrality, many legal units in Sierra Leonean banks are under-resourced, under-consulted, or structurally excluded from onboarding workflows. Several operational realities feed this:

(a) Speed over scrutiny: Business development teams prioritize client acquisition, pushing compliance to the background.
(b) Late-stage involvement: Lawyers are brought in only after an account has been flagged or investigated, rather than during initial vetting.
(c) Siloed operations: Legal departments often operate independently of risk or compliance units, resulting in fragmented oversight.
(d) Lack of training: Some legal teams are not trained in financial crime detection, limiting their effectiveness.

This vacuum is costly. In 2023, multiple banks in West Africa (including Ghana and Nigeria) faced sanctions and reputational damage for onboarding shell companies involved in illicit transactions. Similar risks exist in Sierra Leone, especially given the absence of a public beneficial ownership register, which makes concealment of true control easy.

(d) A Case for Reform: The Lawyer as Risk Gatekeeper

To prevent legal and compliance failures, banks must reform how legal units are engaged in due diligence:

(a) Embed legal review at the pre-approval stage of high-risk accounts.
(b) Create multidisciplinary onboarding teams (legal, compliance, risk, operations) for all corporate accounts.
(c) Train lawyers in forensic document review, international sanctions, and shell company structures.
(d) Digitize legal checks and align them with global FATF standards.
(e) Empower legal departments to veto account approvals on legal grounds.

7. WHAT NEEDS TO CHANGE – THE STRENGTHENING MECHANISMS

If Sierra Leone's banking sector is to rise to international compliance standards and protect itself from systemic risks, a paradigm shift in how legal due diligence is conducted is essential. The following reforms, grounded in both global best practices and local realities, must be prioritized:

(a) Empower Legal Units at the Frontline Not the Sideline

Legal teams must be repositioned as strategic gatekeepers, not just box-tickers. Their involvement must begin at the first point of client engagement - during account opening and client onboarding - not as an afterthought once

problems arise.
The How:

(i) Revise internal SOPs (Standard Operating Procedures) to mandate legal review before account activation for all medium-to-high-risk clients, especially companies.
(ii) Establish a Risk Control Desk with a direct reporting line to Executive Management and Board Audit Committees.
(iii) Embed legal officers into Relationship Management teams for real-time risk input.

(b) Professional Training and Capacity Development

Many account officers, relationship managers, and even junior legal staff remain undertrained on modern AML/CFT compliance, beneficial ownership analysis, and red flag detection. This knowledge gap results in missed signs of shell companies, nominee directors, and false declarations.

The How:

(i) Implement mandatory quarterly trainings on corporate structures, red flag indicators, and recent typologies (e.g., UNODC, FATF updates).
(ii) Partner with international firms, regional banks, and institutions like the West African
(iii) Institute for Financial and Economic Management (WAIFEM) or FATF/GIABA for certification programs.
(iv) Establish a local compliance academy under the Bankers Association with trainers drawn from the legal profession, the FIA, and Bank of Sierra Leone.

(c) Build and Operationalize a Public Beneficial Ownership Register

Shadow ownership is the greatest threat to corporate transparency in Sierra Leone. Without a centralized, real-time registry of beneficial owners, banks cannot properly trace control and economic interest in corporate clients.

The How:

(i) Leverage the Corporate Affairs Commission (CAC) under the Companies (Amendment) Act 2024 to mandate disclosure and online submission of beneficial ownership information.
(ii) Create a digital interface, accessible by licensed financial institutions, that tracks real-time changes in ownership and directorship.
(iii) Ensure integration with KYC utilities and the FIA database, allowing cross-referencing of declared vs. actual controllers of a company.

(d) Enforce Regulatory Consequences – Fairly, but Firmly

A key weakness in Sierra Leone's compliance culture is the lack of deterrence. Many institutions bypass due diligence protocols knowing enforcement is inconsistent. This must change if the system is to mature.

The How:

(i) The Bank of Sierra Leone and FIA must routinely conduct thematic AML/CFT compliance reviews of banks.
(ii) Non-compliant institutions should face graded penalties: from administrative fines and directives, to public reprimands and suspension of licenses for persistent failures.
(iii) Promote transparency in enforcement by publishing anonymized summaries of non-compliance actions, so institutions learn sector-wide lessons.

(e) Foster Legal Collaboration: In-House Meets External Counsel

The in-house legal team, while essential, is not omniscient. External lawyers, especially those with expertise in corporate law, M&A, and regulatory advisory, bring a wider perspective that can be crucial for vetting high-risk entities.

The How:

(i) Develop an approved legal panel system where banks contract independent law firms to conduct legal audits for complex corporate clients, foreign investors, or politically exposed persons (PEPs).
(ii) Introduce a "Legal Risk Scorecard" to accompany the onboarding pack for businesses, with risk grading done jointly by internal and external legal counsel.
(iii) Encourage joint case reviews between bank legal teams and the FIA or Anti-Corruption Commission for cross-institutional intelligence.

Sierra Leone cannot afford to operate as a regulatory island. With the global financial ecosystem placing increased emphasis on AML/CFT compliance, local banks risk being de-banked, blacklisted, or fined unless a systemic and sustainable compliance architecture is built. Legal due diligence is not merely a formality; it is a frontline defense mechanism. Therefore, strengthening it requires political will, regulatory muscle, institutional maturity, and a redefinition of the lawyer's role in modern banking - from back-office document reviewers to front-office risk strategists.

8. CONCLUSION

In Sierra Leone's evolving financial landscape, legal due diligence must be treated as a frontline defense, not a back-office routine. Banks cannot afford to open accounts without knowing who they're dealing with or what risks they're inheriting. Lawyers bring the expertise to ask hard questions, interpret complex company structures, and protect institutions from fraud, reputational harm, and regulatory breaches. Compliance begins with legal eyes. If Sierra Leone's banks are to grow with integrity, legal scrutiny must guide every onboarding step, not follow after damage is done.

THE END.