

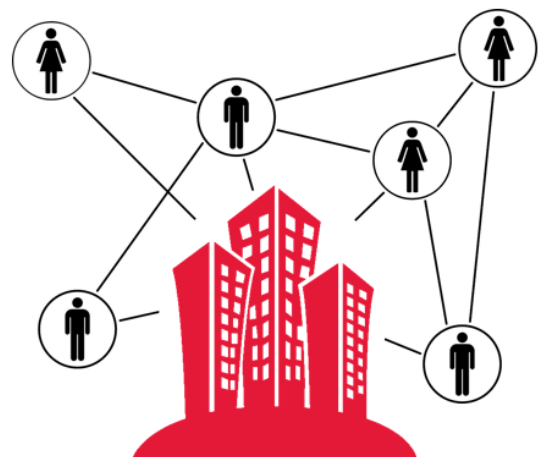
BENEFICIAL OWNERSHIP IN COMPLEX ENTITIES AND LEGAL ARRANGEMENTS: CBN'S GUIDANCE TO FINANCIAL INSTITUTIONS ON LIFTING THE CORPORATE VEIL

The increasing use of corporate vehicles, such as companies, trusts, foundations and other types of corporate/legal arrangements, has elevated concerns among financial regulators globally. The concerns are not unconnected with the growing risks of possible concealment and conversion of illicit funds by criminals while hiding under the legal protection afforded by the veil of incorporation.

To stem illicit financial flows within the global financial system, the Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog, has promoted various initiatives. The FATF requires that countries put in appropriate arrangements to ensure that adequate and accurate information on beneficial ownership is easily accessible in a timely manner by competent authorities, to check corporate vehicles from being abused within the financial system. The FATF has recently placed Nigeria on its "grey list" of countries requiring increased monitoring because of identified deficiencies in applicable regimes to counter money laundering, terrorist financing, and proliferation financing. In furtherance of this, on January 12, 2023, the Central Bank of Nigeria ("CBN"), via a Circular referenced FPR/DIR/PUB/CIR/001/064, introduced the "Guidance on Ultimate Beneficial Ownership of Legal Persons and Legal Arrangements" (the "Beneficial Ownership Guidance"). Prior to this, the apex bank had issued the *Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions) Regulations, 2022* ("**CBN AML/CFT/CPF Regulations**"). The *CBN AML/CFT/CPF Regulations* require financial institutions to understand the

structure of legal persons and legal arrangements, and to also undertake customer due diligence measures to mitigate the risks of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.

Thus, the recently released Beneficial Ownership Guidance provides practical steps, which financial institutions are required to take in identifying and verifying the natural persons who are the ultimate beneficial owners and controllers of corporate vehicles, in line with extant laws and regulations on money laundering and terrorism financing including the CBN AML/CFT/CPF Regulations. This article provides a synopsis of the Beneficial Ownership Guidance, as a quick compliance tool, for banks and other financial institutions under the regulatory remit of the CBN.



Determining a beneficial owner

A beneficial owner of a legal entity, is considered to be any natural person(s) who:

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- ultimately owns/holds at least 5% of the issued shares in the legal entity;
- controls a customer and/or a natural person who exercises at least 5% of the voting rights in the legal entity either directly or indirectly;
- holds a right, either directly or indirectly, to appoint or remove majority of the directors (or similar positions) of the legal entity;
- ultimately directs a transaction, being the person on whose behalf the transaction is being conducted; and/or
- exercises, either directly or indirectly, significant influence or control over the legal person.



Financial institutions are expected to rely on relevant source documents to determine a beneficial owner. These include Certificate of Incorporation, Memorandum and Articles of Association (MEMART), Partnership Agreements, Annual Returns, Financial Statements, Trust Deeds/Trust Registration Documents, and Constitutions/Charters/Byelaws. They are also expected to go beyond the regular, internally generated documents, and obtain information from public registers such as Corporate Affairs Commission (“CAC”)’s record, print and electronic media, and web-based platforms like the internet and social media.

In addition to this, information on relevant relationships within an entity, such as authorized signatories, nominee directors, partners, senior

management, persons with voting rights, settlors, trustees and beneficiaries, and persons having power of attorney over the entity, among similar others, give a strong direction as to who, in fact, exercises effective control over the affairs of the entity. In the same token, consideration should be given to the entity’s customer’s governance and management structure.

Critical red flags

Financial institutions are required to take cognizance of the following, as strong indicators of beneficial ownership:

- an extract of a shareholder registry showing ownership;
- any nominee agreement that shows who exercises real control behind a shareholder arrangement;
- a shareholders’ agreement that shows a natural person controlling the shares of more than one shareholder, effectively giving control;
- documentary evidence that a natural person is able to exercise a dominant influence over a legal person;
- documentary evidence that a natural person has the power to appoint senior management;
- documentary evidence (for example, an employment contract) that a director or employee can influence a legal person.
- documentary evidence of exercise of dominant influence over the transactions of a legal entity/ arrangement.

Expectations from Financial Institutions

A financial institution is under obligation to take reasonable steps to:

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liabilities of the entities from being ascribed to the natural persons who are the directing minds acting behind the veils of the entities' incorporation. Consequently, legal persons and legal arrangements have been used by natural persons in many instances to carry out fraudulent business deals and illicit financial flows.

With the increasing complexity and sophistication of corporate vehicles, legal ownership no longer necessarily determines effective control. Hence, ownership interests can be so diversified that there may be no natural persons (whether acting alone or with others) exercising control of a legal person or legal arrangement through ownership. In such a circumstance, it is necessary to look beyond ownership interest and take steps to ascertain the natural person(s) who exercises control through other means. In this regard, any person who exercises responsibility for senior management decisions, or on whose behalf a transaction is being carried out, will be taken to be a beneficial owner.

Without prejudice to the protection of incorporation, where a serious crime has been committed through a legal entity, the court will give order lifting the veil of incorporation to expose the natural persons acting through the entity and to which the benefits or proceeds of such a crime can be traced.

A unique feature of the Beneficial Ownership Guidance is that, rather than waiting for a financial crime to be committed before the veil of incorporation is lifted, financial institutions are obliged to verify and identify beneficial owners of their customers that are legal persons and legal arrangements right from the on-boarding stage, and continuously for as long as the customer relationship lasts. In this regard, banks and all other financial institutions in Nigeria should take immediate steps to carry out their roles, as prescribed.



Coincidentally, the legal framework for identifying beneficial ownership in all entities beyond financial institutions got a boost with the passage of the Companies and Allied Matters Act of 2020 (“**CAMA**”). Thus, under the CAMA, a person with significant control over a company is required to give particulars of such control in writing to the company, within seven (7) days of acquiring the status. Upon receipt of such information on significant control, the company is under obligation to, in turn, notify the CAC of the information received not later than one month.

Similarly, a person who is a substantial shareholder in a public company is mandated to give notice in writing to the company within fourteen (14) days, stating his name, address and full particulars of the shares held by him or his nominee. A person is a substantial shareholder in a public company if he holds (himself or by his nominee) shares in the company which entitles him to exercise at least five percent (5%) of the unrestricted voting rights at any general meeting of the company. Upon receipt of the notice or becoming aware that a person is a substantial shareholder, the company is also under obligation to notify the CAC accordingly, within fourteen (14) days. Any person or company who contravenes the provisions of the CAMA on significant control is liable to such fines as the CAC may prescribe by regulation. Furthermore, the CAC is required to maintain a register of persons with

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significant control, in which relevant information received from companies shall be recorded. In this regard, the CAC launched a Beneficial Ownership Register Platform in November 2022. The platform is an automated platform where records of people with significant control over registered companies are compiled by CAC and made available for use by the general public as well as the government.

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