



CLIENT UPDATE

# PERSONS WITH SIGNIFICANT CONTROL REGULATIONS, 2022

## 1. Introduction

On 23<sup>rd</sup> November 2022, the Minister of Industry, Trade and Investment approved the Persons with Significant Control Regulations, 2022 (the “**PSC Regulations**”) in exercise of its power under section 867 of the Companies and Allied Matters Act, 2020 (“**CAMA**” or the “**Act**”). The regulations were published on the website of the Corporate Affairs Commission recently.

The objective of the PSC Regulations is to provide a framework and procedure for obtaining and reporting relevant information on persons with significant control or beneficial owners of a limited liability company, Limited Liability Partnership (LLP), foreign-exempted companies, foreign-exempted limited LLPs, and government-owned companies.

## 2. Key Provisions in the PSC Regulations

### 2.1 Definition of Persons with Significant Control

2.1.1 The PSC Regulations define a person with significant control (“**PSC**”) as a beneficial owner, which is the natural person(s) who ultimately owns or controls a company or LLP or the natural person on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or arrangement.

2.1.2 In addition, the PSC Regulations also adopt the definition of a PSC under section 868 of the CAMA to mean any person who:

- a) holds at least 5% of the issued shares in a company or interest in an LLP either directly or indirectly;
- b) exercises at least 5% of the voting rights in a company or LLP directly or indirectly;
- c) holds a right, directly or indirectly, to appoint or remove the majority of the directors of the company or partners of the LLP;
- d) exercises significant influence or control, directly or indirectly, over the company or LLP; or
- e) has the right to exercise, or actually exercises significant influence or control over the activities of a trust or firm whether or not it is a legal entity but would itself satisfy any of the first four conditions above if it were an individual.

2.1.3 The PSC Regulations define “significant influence or control” as the ability to direct or materially influence the finances, financial policies, management, operations, and structure of a company or LLP, or derive significant economic benefits from the company or LLP.

2.1.4 The implication of the above definitions is that the natural persons (that is, individuals) who ultimately own or control the corporate entities to which the PSC Regulations apply are required to be disclosed to the CAC as PSCs, as long as they fall within the criteria above. The Regulations are applicable to any company registered under Part B of CAMA, a limited liability partnership registered under Part C of CAMA and any other relevant entity specified under the Regulations. In relation to the latter, the regulations specified foreign-exempted companies, foreign-exempted limited LLPs, and government-owned companies as also being subject to the regulations. The regulations do specify the following entities as being subject to them: Incorporated Trustees, registered cooperative societies which are not under the jurisdiction of the CAC or subject to the CAMA, and Limited Partnerships.

## 2.2 Information to be inscribed in the Register of Members

2.2.1 Entities to which the PSC Regulations apply are required to inscribe information received from persons with significant control, which shall include the particulars listed in Regulation 4(2) of the PSC Regulations, against the name of each member that qualifies as a PSC in the register of members. The information required in Regulation 4(2) include:

- a) full name;
- b) national identity number or international passport number or driver's license number;
- c) nationality;
- d) date of birth;
- e) place of birth;
- f) date of death of PSC (where applicable as relates to cessation of significant control);
- g) service address;
- h) residential address;
- i) telephone number;
- j) email address;
- k) politically Exposed Person (PEP) status (where applicable);
- l) occupation or profession;
- m) nature of ownership or control;
- n) the date on which a person became a PSC of the company or LLP; and
- o) any other relevant detail the Commission may from time to time require.

2.2.2 Additional particulars under Regulations 4(4)(c) 4(4)(d) and 4(5) are required to be entered in a central register by the Commission as PSC information where the reporting company or an intermediary entity is a publicly listed company, state-owned entity or foreign-exempted company or LLPs.

2.2.3 The additional particulars for public companies are:

- a. name of stock exchange identifier scheme and identifier code;
- b. ticker code;
- c. name of each stock exchange on which the shares are listed as specified in the market identifier code (MIC);
- d. market identifier code and operating MIC;
- e. web address of the page which gives details of the listing for each exchange names

- f. stock exchange jurisdiction (the ISO 3166 country code for the jurisdiction in which the stock exchange is based);
- g. URL where all regulatory notifications of major holdings can be found, and
- h. URL to the website of the publicly listed company

2.2.4 The additional particulars for state-owned entities are:

- a. mode of formation, by statute or by registration with the Commission;
- b. where applicable, the name of the law or statute;
- c. where applicable, the date the law or statute was enacted;
- d. company registration number for government-owned entities formed by registration with the Commission;
- e. relevant jurisdiction or state;
- f. where applicable, the name and address of each government body through which the relevant jurisdiction or state exercises control or ownership of the reporting company;
- g. the percentage of ownership and nature of control of each government agency;
- h. the particulars required in paragraph (b) of this sub-regulation and the date of appointment of the chief executive officer (CEO) of the government agency;
- i. the particulars required in paragraph (b) of this sub-regulation and the date of appointment of any other senior management government official who exercises significant influence or control over the government agency and the method by which control is exercised, and
- j. where an SOE registered at the Commission is a PLC, the SOE shall be required to provide information under paragraph (c) of this sub-regulation.

2.2.5 The additional particulars for foreign exempted companies and LLPs are:

- a. the company or limited liability partnership name;
- b. registration number;
- c. country of registration;
- d. date and period of exemption;
- e. objects or grounds for the exemption;
- f. particulars of the persons with significant control who ultimately own or control the company or limited liability partnership;
- g. where the foreign exempted company is publicly listed, the information required shall be as specified for publicly listed companies under the PSC Regulation;

- h. where the exempted company or limited liability partnership is a state-owned entity, the information required shall be as specified for state-owned entities under the PSC Regulation.

### 2.3 Interest held through intermediary legal persons

The PSC Regulations provide that where a PSC holds its ownership interest indirectly through a corporate entity, the reporting entity is required to identify and provide information on the intermediary corporate entity through which the interest in the reporting entity is held. This means that, in addition to providing details of the individuals who are the ultimate beneficial owners of the company, the reporting entity is required to disclose the corporate entity(ies) through which the PSC's interest is held, where such interest is held indirectly.

### 2.4 Obligation, Procedure and Timelines for reporting PSC information/changes

- 2.4.1. The obligation to disclose PSC status is set out in sections 119 and 791 of the CAMA 2020; the Regulations have only provided more details relating to the procedure for compliance with the obligation. The CAC also issued a public notice on its website on 9<sup>th</sup> September 2022, directing all affected entities to commence the PSC notification filings. Sections 119(5) and 791(5) of the CAMA 2020 prescribe that penalties may be imposed by the CAC for late notifications in accordance with prescribed regulations. We have set out the sanctions in paragraph 2.8 of this update.
- 2.4.2 Under the Regulation, a PSC is required to notify the company or LLP of the particulars of its control **within 7 (seven) days** of becoming a PSC. A company or LLP is under obligation to disclose information of its person(s) with significant control, including any changes or cessation to the Commission **not later than one month** after receipt of the information or any changes to a person's PSC status. In addition, where the foreign entity is a subscriber, shareholder or partner in a company or LLP, it is the foreign company's responsibility to provide details of the PSC who ultimately owns the foreign company or LLP.

PSC must be disclosed to the CAC by a company or LLP in any of the following ways:

- a. when a new company/LLP is formed;
- b. when filing annual returns;
- c. within one month after a person becomes a PSC;

- d. when filing a notification for foreign exempted company/LLP, and;
- e. when filing the annual report for a foreign exempted company/LLP.

## 2.5 Service of notice to disclose PSC information

Under the PSC Regulations, a company or LLP that has reasonable cause to believe that a person is its PSC shall notify the PSC and require such person to provide the particulars set out in the PSC Regulations. The recipient of the notice is expected to provide the required information within 7 (seven) days of the receipt of such notice. Upon non-compliance with the notice, a warning notice is to be issued and should contain the following:

- a. the date on which the warning notice is issued and the date of compliance;
- b. a copy of the initial notice issued;
- c. require the person to comply with the initial notice issued within a specified time;
- d. state that it is proposing to restrict the relevant interest the person holds in the company or limited liability partnership; and
- e. explain the effect of the restriction.

The warning notice is to be kept in the company's register of members. If the suspected PSC does not comply with the warning notice within seven days from the date of the notice, the company or LLP is required to restrict the relevant interest of a PSC where the person has not complied with the warning notice, make a note in its register of members to indicate the restriction and file a copy of the restriction issued with the CAC within 7 (seven) days from the date of issuance of the restriction. The 'restriction' can be implemented in the following ways:

- a) any transfer of the interest is void;
- b) no rights are exercisable in relation to the interest;
- c) no shares may be issued in right of the interest or pursuance of an offer made to the interest-holder;
- d) no payment may be made of sums due from the company or LLP in relation to the interest.

Where a PSC complies with the notice of restriction, the company or in relation to is required to withdraw the restriction placed on the relevant interest of the PSC within 14 (fourteen) days of compliance with the notice.

## 2.6 Confidentiality of PSC information

The PSC information is confidential and can only be disclosed by a company or LLP for the purpose of complying with the PSC Regulations or court order. The PSC information may also be disclosed:

- a) with the written consent of the person with significant control;
- b) shall be available to the public at no cost subject to the provision of Regulation 17 of the Companies Regulation 2021 on Restriction of Protected and Personal Information; and
- c) shall be made available to Law Enforcement Agencies, Investigation Agencies, and any other relevant Competent Authority.

The PSC Regulations do not, however, define the term “Competent Authority.” This gap could lead to discretionary disclosures of personal data depending on whom the company or LLP may consider to be within the definition of “Competent Authority”.

## 2.7 Access to the PSC central register

The CAC is to freely make available to the public the following information from the central register on each natural person who is a PSC –

- a) full name of PSC;
- b) the date on which the reportable ownership or control started;
- c) date of declaration of significant influence or control;
- d) occupation;
- e) service address;
- f) nationality;
- g) nature of ownership or control in the company or LLP; and
- h) unique identifier.

The CAC is also to freely make available to the public the following information from the central register on each reporting entity:

- a) company or LLP name;
- b) company or LLP registration number;
- c) status;
- d) number of PSCs and relevant particulars; and
- e) country of registration.

## 2.8 Sanctions

The PSC Regulations provide for sanctions and empower the CAC to enforce the sanctions. Some of the sanctions provided under the PSC Regulations are:

- a) The status of any company or LLP that defaults in complying with the reporting requirements in relation to the PSC register shall be reflected as “inactive” on the PSC register and all other relevant online portals of the CAC.
- b) Where any statement required to be furnished to the CAC in relation to the PSC register contains any matter which is false to the knowledge of the reporting company or LLP, such reporting entity and each of its officers commit an offence and are liable on conviction, in the case of the reporting entity, a fine as the court deems fit; and an officer of the reporting entity, imprisonment for a term of two years.
- c) the CAC is also not required to approve an application for registration or filing of the annual returns of a company or LLP, unless PSC information is provided. Also, the CAC shall not issue a letter of good standing to any company or LLP that failed to comply with their PSC reporting obligations to the CAC.

The table below outlines the applicable financial sanctions provided under the PSC Regulations:

S/N	Offences	Small Company	Medium/ Large company/Ltd Gte	PLC	LLP	Foreign exempted company / LLP
1.	Failure by a company or LLP to comply with the reporting requirements in respect of the PSC register the company or LLP and every officer of the company or LLP shall be liable to pay to the CAC for every day the default continues, an administrative penalty	₦5,000	₦10,000	₦25,000	₦5,000	Not applicable
2.	Where the CAC verifies or receives information confirming that the PSC on the CAC’s record is not or is no longer the PSC or different PSC	₦50,000	₦100,000	₦200,000	₦50,000	Not applicable



S/N	Offences	Small Company	Medium/ Large company/Ltd Gte	PLC	LLP	Foreign exempted company / LLP
	information has been provided to other government organisations or banks and such change in PSC has not been filed with the CAC, the company or LLP shall be liable to pay to the CAC an administrative penalty					
3.	A company or LLP that fails to comply with the directives of the CAC to file a notice of changes within seven days shall have its status reflected as "inactive" and liable to pay to the CAC a daily administrative penalty	₦10,000	₦20,000	₦25,000	₦10,000	Not applicable
4.	Where a foreign-exempted company or LLP defaults in complying with the requirements for PSC disclosure under these Regulations, the company or LLP and each of its officers shall be liable to pay to the CAC a daily administrative penalty for the period the default continues	Not applicable	Not applicable	Not applicable	Not applicable	₦10,000

## 2.10 CONCLUSION

The PSC Regulations will increase transparency in the beneficial ownership structure of entities registered with the CAC and businesses operating in Nigeria and will help the CAC to adhere to Nigeria's international obligations under the Financial Action Task Force (FATF). They have also added to the several reporting and corporate governance obligations of entities registered with the CAC that company secretaries, external counsel and directors have to be mindful of to avoid sanctions and liabilities.

Some concerns that exist include whether the CAC has the legal authority to empower companies or LLPs to restrict the legal rights of PSCs in relation to their interests in these entities due to non-compliance with the Regulations. Another major concern is data protection. The Regulation gives the CAC powers to make available to the public freely, the address and unique identifier of PSCs, without putting processes in place to ensure that this data are not inadvertently made available to unauthorised processors. As we have stated in paragraph 2.6 of this article, the PSC Regulations do not define the “Competent Authority” to which companies or LLPs may disclose personal information of PSCs, thereby leaving room for subjective interpretation. The Competent Authority for the purpose of disclosures should be clearly prescribed to avoid abuse of personal data.

## DISCLAIMER

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