

REGULATORY UPDATE

WHAT TO KNOW ABOUT THE CBN GUIDANCE ON ULTIMATE BENEFICIAL OWNERS OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

Introduction

In the course of 2022, the primary Nigerian anti-money laundering and the combating financing of terrorism (“AML/CFT”) laws were repealed and re-enacted with the enactment of the Money Laundering (Prevention and Prohibition) Act, 2022 (“MLPPA”) and the Terrorism (Prevention and Prohibition) Act, 2022 by the National Assembly. Following this development, the Central Bank of Nigeria (“CBN”) followed suit by issuing the CBN (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions) Regulations 2022 (“**AML/CFT Regulations**”) to all Nigerian banks, other financial institutions and payment service providers.

As part of the CBN’s objective to promote compliance with AML/CFT laws in Nigeria, and to safeguard financial institutions from being used for financial crimes, the AML/CFT Regulations require all financial institutions to identify and take reasonable steps to verify the identity of a beneficial owner of its customer using relevant information or data obtained from reliable sources to satisfy itself that it knows who the beneficial owner is. This is in addition to understanding the nature of a customer’s business including its ownership and control structure. Financial institutions are, therefore, required to unmask the identity of the beneficial owner(s) of a customer

legal entity or an arrangement. This requirement is particularly important given the common usage of various corporate vehicles and legal arrangements to transact businesses including, in some cases, to legitimise the proceeds of criminal activity.

In order to assist financial institutions to meet their obligations under the AML/CFT laws and regulations, and to prevent any abuse of the Nigerian financial system, the CBN published its “Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements” on 12th January 2023 (the “**Guidance on Beneficial Owners**”). The Guidance on Beneficial Owners requires all financial institutions under the regulatory purview of the CBN to immediately comply with its provisions. The CBN draws from global standards in the terms of the Guidance on Beneficial Owners as part of the CBN’s efforts to comply with the global Financial Action Task Force’s demand that countries ensure that adequate, accurate and timely information on beneficial ownership is accessible to prevent corporate vehicles from being abused in the global financial system.

We will, in this update, look at the key provisions of the Guidance on Beneficial Owners and discuss its impact on the operations of financial institutions in Nigeria as well as their customers.

Objective of the Guidance on Beneficial Owners

By issuing the Guidance on Beneficial Owners, the CBN hopes to assist financial institutions to identify and verify the beneficial owners of legal persons and legal arrangements of their corporate customers thereby curbing the use of corporate vehicles for money laundering and terrorism financing. It is important to note that the Guidance on Beneficial Owners is not exhaustive and is to be read in line with existing money laundering, terrorism financing and proliferation financing laws and regulations.

To whom does the Guidance on Beneficial Owners Apply?

The Guidance on Beneficial Owners applies to all financial institutions regulated by the CBN which include commercial banks, merchant banks, microfinance banks, payment service banks, finance companies and payment service providers.

Who is a Beneficial Owner?

The Guidance on Beneficial Owners defines a beneficial owner as a natural person who ultimately controls or owns a corporate customer and/or the natural person on whose behalf a transaction is being conducted and includes persons who ultimately exercise effective control over a legal person or arrangement.

The guidance makes a distinction between the beneficial owner and the legal person and places the focus on the beneficial owner by stating that consideration is to be given to the natural person(s) who has actual ownership and control over a corporate vehicle or on whose behalf or authority a transaction is being conducted. What this means is that the guidance does not focus on a person (such as a nominee) who is simply the legal owner or who is just entitled to exert control on paper but in actual fact has no such powers.

How can a Financial Institution Determine who is a Beneficial Owner?

As we have indicated above, the Guidance on Beneficial Owners provides that a beneficial owner refers to a natural person:

- (a) who ultimately owns (holds directly or indirectly more than 5% of the issued shares in the legal person);
- (b) who controls a customer and/or the natural person who either (but not limited to); (i) exercises directly or indirectly at least 5% of the voting rights in the legal person, or (ii) holds directly or indirectly a right to appoint or remove a majority of the directors or persons in similar positions of the legal person;
- (c) on whose behalf a transaction is being conducted; and/or
- (d) who exercises ultimate effective control over a legal person or legal arrangement.

Applying the above criteria in determining who a beneficial owner is, financial institutions are to rely on source documents that include corporate documents and other information obtained from a customer. Financial institutions can also obtain information from the companies' registry and other publicly available sources like the internet, print media, electronic media and social media. Financial institutions are also advised to have a clear understanding of the customer's governance and management structure which will help in identifying individuals that have effective control over that customer.

Furthermore, financial institutions are to pay attention to relevant relationships such as senior management, authorised signatories, persons with voting rights, nominee directors, partners, office holders, settlors, trustees and beneficiaries, persons having power of attorney over the entity, etc

How can a beneficial owner be Identified and Verified?

A customer due diligence (“CDD”) is necessary based on a customer’s risk assessment when identifying and verifying a beneficial owner, especially at the onboarding stage. As such, financial institutions must take all reasonable measures to verify all beneficial owner-related information. The verification and identification process involves a three-step cascade approach contained in regulation 21 of the CBN AML/CFT Regulations. This approach involves the following steps:

- (i) identifying and verifying the natural persons, where they exist, that have an ultimate controlling ownership interest in a legal person, taking into cognisance the fact that ownership interests can be so diversified that there may be no natural persons, whether acting alone or with others, exercising control of the legal person or arrangement through ownership;
- (ii) where there is doubt as to the person(s) with the controlling ownership interest as beneficial owners or where no natural person exerts control through ownership interests, identify and verify the natural persons, where they exist, exercising control of the legal person or arrangement through other means; and/or
- (iii) where a natural person is not identified, identifying and taking reasonable measures to verify the identity of the relevant natural person who holds a senior management position in the legal person.

In relation to legal arrangements, all persons must be identified and verified. Such persons include a settlor, trustee, protector where they exist, the beneficiaries or class of beneficiaries or persons in equivalent or similar positions, and any other natural person exercising ultimate or effective control over the legal arrangement including through a chain of control or ownership.

In verifying the identity of a beneficial owner, reliable and independent documents from the sources discussed above and any other reliable sources must be used. In making an evaluation of a beneficial owner, some of the red flags that can be used to identify a beneficial owner include:

- an extract of a shareholder registry showing ownership;
- a nominee agreement showing who exercises real control behind a shareholder arrangement;
- a shareholders’ agreement showing a natural person can control the shares of more than one shareholder, effectively giving control;

- documentary evidence that a natural person can exercise a dominant influence over a legal person;
- documentary evidence that a natural person has the power to appoint senior management;
- documentary evidence (i.e an employment contract) that a director or employee is able to influence a legal person; and
- documentary evidence of the exercise of dominant influence over the transactions of the legal entities/arrangements.

Responsibilities of Financial Institutions

Financial Institutions' responsibilities include to: identify and manage risks posed by legal persons and arrangements; apply enhanced due diligence on complex corporate vehicle structures that pose higher risks; understand the nature and ownership structure of a customer's business; identify and verify the identity of a beneficial owner, board, senior management, settlor, trustee, beneficiary and other positions denoting control; ensure the records of all relevant documents used in determining the beneficial owner for legal persons or legal arrangements are kept and updated periodically; and ensure that relevant authorities have timely access to beneficial owner information.

Approach to be Adopted in Managing and Assessing beneficial owners

The CBN requires financial Institutions to adopt a risk-based approach in identifying and verifying beneficial owners. The measures to be adopted should be set out in the financial institution's AML/CFT/CPF framework. In relation to beneficial owners that pose a higher risk, the relevant financial institution must conduct a CDD and file a suspicious transaction report with the Nigerian Financial Intelligence Unit where there are reasonable grounds to suspect money laundering or terrorism financing. Financial institutions are also to establish AML/CFT/CPF internal policies and procedures aimed at mitigating risks identified relating to beneficial owners and which should help to determine if a beneficial owner is a politically exposed person (PEP) or a family member or close relation of a PEP.

Additional measures to be adopted in determining the status of a beneficial owner include obtaining senior management approval prior to establishing or continuing the customer relationship, establishing the beneficial owner's source of funds and source of wealth, and conducting enhanced ongoing monitoring of the customer relationship.

The Obligations of a Financial Institution under the Guidance on Beneficial Owners

The Guidance on Beneficial Owners imposes various obligations on financial institutions which include:

- **Record Keeping:** Financial institutions are required to keep up to date electronic or written form records of all beneficial owners obtained through CDD measures including account files and business correspondence as well as the results of any analysis undertaken. These should be kept for a period of at least five years from the date of the termination of the business relationship or after the date of the occasional transaction.
- **Access to Information:** Upon request by either the CBN or any other competent authority, financial institutions must provide information on any beneficial owner in their possession to such requesting authority.
- **Periodic Returns:** Financial institutions must render periodic returns on their customers to the CBN including the details of beneficial owners who are legal persons and any legal arrangements. The Guidance on Beneficial Owners is, however, silent on the frequency of these returns.
- **Beneficial Owner Register:** The information obtained and collected during a CDD or from other sources on a beneficial owner are to be kept in the financial institution's beneficial owners' register. This register must be regularly reviewed and is to be updated on an annual basis or when there are changes. In addition, all inconsistencies or discrepancies between the beneficial owner information in a public register and the financial institution's beneficial owners' register must be flagged and reported to the CAC through either; (a) <https://forms.office.com/r/Gs8UprwEdT>; or (b) pscverification@cac.gov.ng.

Conclusion

As part of global efforts to combat terrorism financing and money laundering, the CBN's issuance of the Guidance on Beneficial Owners is a welcome development. The guidance provides further clarity and guidance to financial institutions on how to identify beneficial owners as required under the existing AML/CFT laws and regulations. In addition, it could potentially prevent or minimise the use of corporate entities for illegal activities by taking advantage of the anonymity of beneficial owners through complex corporate structures to avoid legal repercussions by concealing the true identities of beneficial owners. The application of the rules will enhance the process of lifting the veil to see the actual persons behind artificial legal personalities and enhance transparency in financial transactions. The guidance, however, imposes

additional obligations on financial institutions regarding dealing with their corporate customers. This is in our view a positive development as its implementation would, potentially, bring transparency to business relationships and prevent money laundering, terrorism financing, and other financial crimes in Nigeria.

Corporate customers of financial institutions are to note that they will now come under intense scrutiny with financial institutions taking steps to identify and verify the beneficial owners behind them. Such corporate customers should have up to date records and should be ready to provide information on their beneficial owners to the relevant financial institution which they are dealing with, upon request.

This update is for general information purposes only and does not constitute legal advice and does not purport to be fully comprehensive. If you have any questions or require any assistance or clarification on how the subject of this guidance note applies to your business, please contact us at uubo@uubo.org.