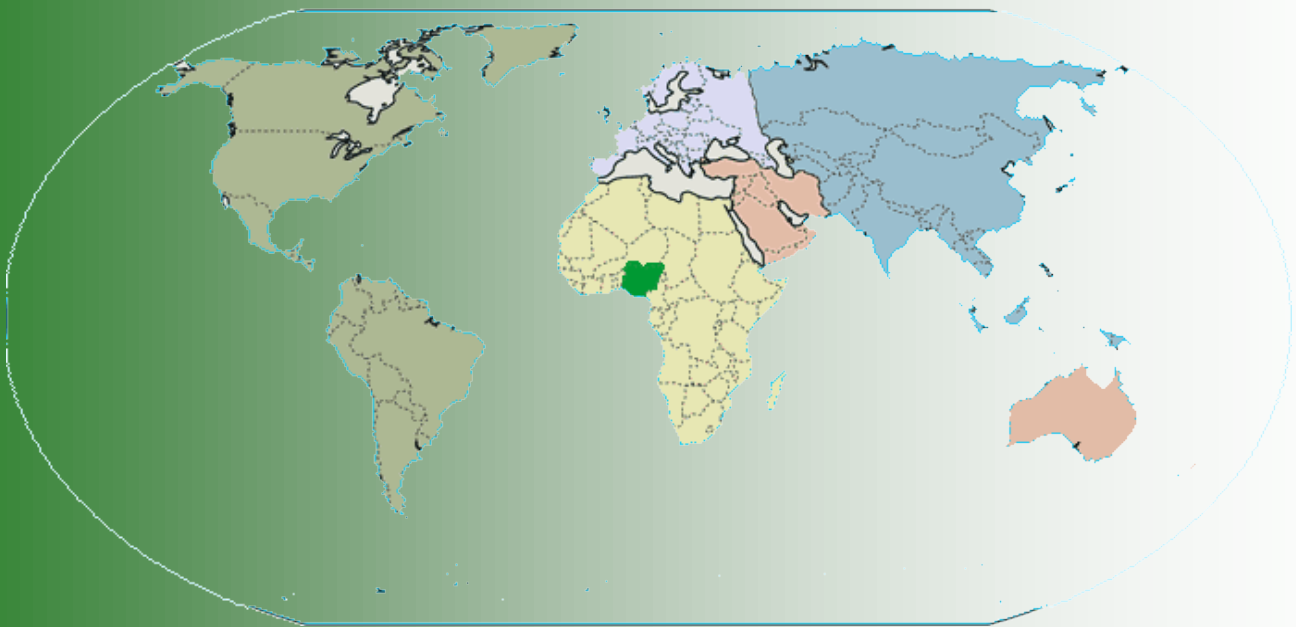




NFIU

NIGERIAN FINANCIAL INTELLIGENCE UNIT



GUIDANCE ON TRANSPARENCY AND BENEFICIAL OWNERSHIP

The Nigerian Financial Intelligence Unit (NFIU) in fulfillment of its obligations on the timely provision of guidance to reporting entities, publishes indicators, advisories and guidelines on crimes of money laundering and terrorism financing in an effort to guide reporting entities on observable patterns.

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1. INTRODUCTION

In line with the Financial Action Task force (FATF) Guidance issued in October 2014 on Transparency and Beneficial Ownership, the Nigerian Financial Intelligence Unit (**NFIU**) wishes to advise all relevant stakeholders to apply recommended measures to enhance transparency in order to prevent the trend of anonymity associated with beneficial ownership when conducting financial transactions. Corporate vehicles such as companies, trusts, foundations, partnerships and other types of legal persons and arrangements play an essential and legitimate role in the global economy but have been misused for illicit purposes and are an attractive way to disguise and convert proceeds of crime before introducing them into the financial system.

The lack of adequate, accurate and timely beneficial ownership information facilitates money laundering and terrorism financing (ML/TF) by disguising the identity of known or suspected criminals, the true purpose of an account or property held by a corporate vehicle and the source or use of funds or property associated with a corporate vehicle. Beneficial ownership information can further be obscured through the use of shell companies, complex ownership and control structures, bearer shares and bearer share warrants, unrestricted use of legal persons as Directors, formal nominee shareholders and Directors, informal nominee share holders and Directors and use of intermediaries in forming legal persons. However, the misuse of the said entities and arrangements could be significantly reduced where information regarding both the legal and the beneficial owner, the source of the corporate vehicle's assets, and its activities were readily available.

2. BENEFICIAL OWNER

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person



or arrangement. A beneficiary is the person or persons who are entitled to the benefit of any trust arrangement. The FATF definition focuses on the natural persons who actually own and take advantage of capital or assets of the legal person; as well as on those who really exert effective control over it, whether or not they occupy formal positions within that legal arrangement or not, other than just the person who are legally entitled to do so. This also includes natural persons on whose behalf a transaction is being conducted, even where that natural person does not have actual or legal ownership or control over the customer. This focuses on individuals that are central to a transaction being conducted even where the transaction has been deliberately structured to avoid control or ownership of the customer but to retain the benefit of the transaction.

Furthermore, the FATF definition also extends to Legal Arrangements, referring to the natural persons at the end of the chain who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural persons on whose behalf a transaction is being conducted including express trusts or other similar arrangements.

3. ENHANCING THE TRANSPARENCY OF LEGAL PERSONS AND ARRANGEMENTS

Legal persons are entities other than natural persons, including companies, bodies corporate, Foundations, partnerships or associations, nonprofit organizations, and other relatively similar entities with legal personality that can establish a permanent customer relationship with a financial institution or otherwise own property.

For any other type of legal person/arrangement that may exist in Nigeria, the specific measures to be taken should be determined on the basis of a risk based approach (RBA). The Money laundering/Terrorist financing (ML/TF) risk associated with these other



types of legal persons should take into account their different forms and structures, and based on the level of risk, determine measures that will achieve appropriate level of transparency. At a minimum, they should record and keep accurate, current & similar types of basic information as required for companies.

It is necessary that relevant entities have mechanisms to:

- Identify and describe the different types, forms and basic features of legal persons
- Identify and describe processes for creating those legal persons, and obtaining and recording basic information on them.
- Make available this information to relevant competent authorities
- Assess the ML/TF risks associated with the different types of legal persons
- Conduct a comprehensive risk assessment of legal persons
- Review cases with which corporate vehicles are being misused for criminal purposes for the purpose of developing typologies indicating higher risk.
- Consider international threats and vulnerabilities associated with legal persons incorporated in another jurisdiction and bank account of domicile, particularly when jurisdictions with weak AML/CFT controls are involved.

4. RECOMMENDATIONS

4.1 REPORTING ENTITIES

1. As a necessary prerequisite, reporting entities, especially financial institutions and designated non-financial institutions, should continue to obtain, record and verify the following basic information on companies:

- i. Company name
- ii. Proof of incorporation
- iii. Legal Form and Status
- iv. Address of the registered office
- v. Basic regulating powers (e.g. Memorandum and articles of association)
- vi. List of Directors and confirmation of their identities

2. Financial Institutions and designated non-financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position equivalent to a senior manager in a public liability company. A percentage shareholding or ownership interest should be considered as a key evidential factor among others to be taken into account.

3. Financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) are to implement the customer due diligence (CDD) requirements on corporate vehicles including the identification of the beneficial owner, identification and management of ML/TF risks, and implementation of AML/CFT controls based on those risks such as suspicious activity reporting and sanctions requirements. This can be carried out when establishing business relations, conducting threshold transactions, when there is suspicion of ML/TF or the financial institution/DNFBP has doubts about the veracity or adequacy of previously obtained customer identification data, and to understand the

ownership and control structure of the customer. Information held should be maintained for five years.

4. Companies should co-operate with competent authorities to the fullest extent possible and designate one natural person resident in Nigeria to be accountable to the competent authorities. They should possess a list of shareholders (including in electronic format) and this should be made accessible to selected competent authority.

4.2 CORPORATE AFFAIRS COMMISSION (CAC)

1. CAC should require public liability companies in Nigeria to maintain a register of their shareholders, containing the number of shares held by each shareholder, categories of shares and nature of the associated voting rights.

2. Basic and beneficial ownership information on legal persons/arrangement should be kept accurate and up to date at all time.

3. It is necessary to have sanctions to ensure that any legal or natural person failing to comply with the requirements is subject to liability and effective, proportionate and dissuasive sanctions as appropriate. Measures should be implemented to overcome specific obstacles to the transparency of companies.

4. Nominee shareholders and directors should disclose the identity of their nominator to the company and to Corporate Affairs Commission. Nominee shareholders should be licensed for their nominee status to be recorded in Corporate Affairs Commission. The natural person who owns or controls the nominator should be disclosed.

5. Where a Director is a legal person, at least one Director should be a natural person. Trust and/or company service providers (TCSPs) who serve as nominee Directors are also subject to AML/CFT obligations and should be supervised including customer Due Diligence (CDD). Where friends, family members or associates are used as informal

nominee arrangements, obligations should be placed on the nominee to disclose to the Corporate Affairs Commission the identity of the person on whose behalf they are acting and CAC should be able to impose sanctions for false declarations.

6. Corporate Affairs Commission (CAC) is encouraged to be well resourced and proactive to hold beneficial ownership information by having broad and sufficient statutory objective to cover the role of collecting, verifying and maintaining beneficial ownership information, with sufficient human and capital resources to ensure verified, accurate and up to date information. This information should be monitored, any changes to them should be recorded, and a structure to ensure that legal persons provide information to them within a defined time period once changes are made should be available.

7. Specific measures should be taken to prevent the misuse of other mechanisms that are frequently used to disguise ownership of companies including bearer shares, bearer share warrants, nominee shares, and nominee Directors. The misuse of Bearer shares and bearer share warrants can be curbed by prohibiting them, converting them into registered shares or share warrants, or immobilizing them and requiring shareholders with a controlling interest to notify the company, and the company to record their identity.

4.3 FINANCIAL AND DESIGNATED NON-FINANCIAL SECTOR REGULATORS

1. Regulators of the financial sector- CBN, SEC and NAICOM as well as regulators of the DNFBPs (SCUML) should ensure an effective monitoring and supervision of financial institutions and designated non financial businesses and profession respectively in relation to transparency and disclosure of beneficial ownership information

4.4 LAW ENFORCEMENT AGENCIES

1. Relevant law enforcement agencies should be aware of the information on beneficial ownership collected and maintained by Corporate Affairs Commission (CAC), Federal Inland Revenue Service (FIRS), financial institutions (FIs), designated non financial busi-



nesses and professions (DNFBPs), and establish working relationship with these organizations to facilitate access to the information on beneficial ownership of companies in a timely manner.

2. Access of foreign competent authorities to the information should be facilitated by the relevant authorities. The quality of assistance received from foreign competent authorities should also be monitored.

5. CONCLUSION

Corporate vehicles are increasingly attractive to criminals for the purpose of disguising their identity and distancing themselves from their illicit assets. Increasing the transparency of corporate vehicles is an effective way to prevent their misuse for criminal purposes. The current policy on bank verification number for all account holders in all deposit money banks in Nigeria is a commendable step that will enhance transparency in the financial sector.

This Advisory therefore aims to strengthen our AML/CFT regime by ensuring the availability of basic and beneficial ownership information. The NFIU recognizes that there may be challenges in implementing these measures; therefore a holistic approach is required in its implementation.

REFERENCES

1. <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>
2. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

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