

ARTICLE SERIES

**THE BENEFICIAL OWNERSHIP REGISTER:  
IMPLEMENTING THE FINANCIAL ACTION TASK FORCE'S  
RECOMMENDATIONS ON MONEY LAUNDERING AND  
TERRORISM FINANCING IN NIGERIA**



SEPTEMBER 2023



## INTRODUCTION

Section 119 of the Companies and Allied Matters Act (“CAMA”) 2020, in conjunction with the Persons with Significant Control Regulations (“PSC Regulations”) 2022, requires companies, Limited Liability Partnerships (“LLPs”), and by extension, foreign exempted companies under section 80 of CAMA 2020 and government-owned entities in Nigeria to disclose details of their beneficial owners and those with significant control over the company. This is in line with global efforts to combat money laundering, terrorist financing, and other illegal activities. Section 119(3) mandates the Corporate Affairs Commission (the “CAC”) to maintain a register of persons with significant control, also known as the Beneficial Ownership Register (“The Register”) in the relevant entities. The Register is accessible online at “bor.cac.gov.ng”.

Through the Register, members of the public can access the information of Persons with Significant Control (“PSCs”). Government agencies can access the portal and generate reports of PSCs free of charge. However, individuals desirous of generating reports will be required to pay a fee to be prescribed by the CAC.

This development enhances the application of the principle of “lifting the corporate veil”, as the disclosure of PSCs in the Register would reveal the identity of individuals who use companies as money laundering vehicles or as mediums to finance terrorism. This is particularly crucial as Nigeria strives to be removed from the grey list. Recently, the Financial Action Task Force (“FATF”) acknowledged Nigeria’s advancements in enhancing its anti-money laundering and counter-terrorism financing (“AML/CFT”) system in alignment with FATF recommendations.

examination of this development will be analysed under subsequent headings.



## **DEFINITION OF PERSONS WITH SIGNIFICANT CONTROL (PSC)**

Section 868 of CAMA, 2020 and Regulation 14 of the PSC Regulations define 'Persons with Significant Control' to include any person under the following category:

- directly or indirectly holding at least 5% of the issued shares or interest in a company or limited liability partnership;
- directly or indirectly holding at least 5% of the voting rights in a company or limited liability partnership;
- directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership;
- otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or
- having the right to exercise or actually exercising 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 if it were an individual.

Under the PSC Regulations, a PSC is ascribed the same meaning as a beneficial owner. The PSC Regulations define a beneficial owner as the natural person(s) who ultimately owns or controls a company or limited liability partnership 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.

The implication of the above is that only natural persons (i.e. individuals) who ultimately own or control the corporate entities in line with Regulation 14 of the PSC Regulations are required to be disclosed to the CAC as PSCs.

## **KEY PROVISIONS IN THE PERSONS WITH SIGNIFICANT CONTROL REGULATIONS, 2022**

### *Interest held through intermediary legal persons*

Regulation 4(6) of the PSC Regulations provides that where a person with significant control is exercising his ownership interest indirectly through a legal person, the company or LLP shall be required to identify and provide information on the intermediary legal person through which such indirect interest in the reporting company or LLP is held.



This entails not only furnishing particulars about the specific individuals who stand as the ultimate beneficial owners of the company but also divulging the corporate entity or entities through which the ownership interest of the PSC is held, particularly in instances where this interest is maintained indirectly.

#### *Obligation and procedure for reporting PSC information or any changes*

Regulation 5 of the PSC Regulations requires a PSC to inform the company or LLP about the specifics of their control within 7 (seven) days of becoming a PSC. Simultaneously, the company or LLP is obligated to reveal information regarding its person(s) with significant control, including any changes or cessation to the CAC. Furthermore, when a foreign entity acts as a subscriber, shareholder, or partner within a company or LLP, the foreign company is responsible for providing particulars of the PSC, who ultimately owns the foreign company or LLP.

#### *Service of Notice to Disclose*

Regulation 6 of the PSC Regulations provides that notice to disclose must be served by a company to a person where it has reasonable cause to believe that such a person is its 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.

#### *Restriction Notice for Failure to Disclose*

Regulation 7 of the PSC Regulations provides that where the warning notice stated in the preceding heading is not complied with within 7 (seven) days of its issuance by the recipient, the company or LLP has the power to restrict the interest of the person served with the notice and to make a note in the Register of members indicating the restriction. A copy of the restriction must be filed with the CAC within 7 (seven) days of the restriction.

The effect of the restriction is that any transfer of the interest is void; no rights are exercisable in respect of the interest; no shares may be issued in right or pursuant to an offer made to the interest-holder; and no payment may be made of sums due from the company or LLP in respect of the interest.

Where the restriction notice is complied with after the time specified in the notice, the company or LLP shall, within 14 (fourteen) days of compliance with the notice, withdraw the restriction placed on the relevant interest of the PSC. The company or LLP is required to file a copy of the withdrawal issued under the PSC Regulations with the CAC within 14 (fourteen) days from the date the withdrawal was issued.

### *Confidentiality of PSC Information*

By the provisions of Regulation 9, a company or LLP shall not use or disclose any information about a PSC except for the following reasons:

1. for the purpose of communicating with the person with significant control;
2. in order to comply with any requirements of the PSC Regulations; or
3. in order to comply with a court order.

However, the information of a PSC may be disclosed with the PSC's written consent and shall be available to the public at no cost, but individuals desirous of generating reports will be required to pay a fee to be prescribed by the CAC, as earlier mentioned. The information shall also be available to Law Enforcement Agencies, Investigation Agencies and any other relevant Competent Authority.

### *Access to the PSC Central Register*

Notwithstanding the preceding heading, the CAC is required by Regulation 10 of the PSC Regulations to make available to the public for free the following information from the PSC Register on each natural person who is a PSC:



- full name of PSC;
- the date on which the reportable ownership or control started;
- date of declaration of significant influence or control;
- occupation;
- service address;
- nationality;
- nature of ownership or control in the company or LLP; and
- unique identifier.

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

- company or LLP name;
- company or LLP registration number;
- status;
- number of PSCs and relevant particulars; and
- country of registration.

#### *Sanctions for Non-compliance*

Regulation 12 of the PSC Regulations 2022 provides that the status of any company or LLP that fails to comply with the reporting requirements in respect of the PSC register shall be reflected as “inactive” on the PSC Register and all other relevant online portals of the CAC.





Furthermore, 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, to a fine as the court deems fit; and an officer of the reporting entity, imprisonment for a term of 2 (two) years.

The CAC is also not required to approve an application for registration or filing of the annual returns of a company or LLP unless the PSC information is provided. Also, the CAC shall not issue a letter of good standing to any company or LLP that fails to comply with their PSC reporting obligations to the CAC.

In addition to the above, the Regulations make provisions for fines that would be imposed on defaulters depending on the offence and the status of the defaulting party.

## **CONCLUSION**

The establishment of the Beneficial Ownership Register is the culmination of persistent endeavours by regulatory bodies within the financial sector. These efforts date back to 2008, a pivotal year marked by a significant setback in Nigeria's capital market that led to a decline in stock values. This downturn made Nigeria less appealing to foreign investors, leading to its recent placement on the FATF's grey list. This designation arose primarily due to the government's inadequacies in effectively addressing money laundering and terrorism financing.

The introduction of the beneficial ownership register is a welcome development in the Nigerian financial sector. Companies are advised to comply with the PSC Regulations and extant laws.

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