

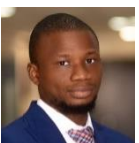
Key contacts



Dayo Okusami
Partner and Co-Head,
Energy & Natural Resources/
Investigations White Collar and
Compliance (IWC)
dayo.okusami@templars-law.com



Lawal Kazeem
Associate,
Dispute Resolution/Investigations White
Collar and Compliance (IWC)
lawal.kazeem@templars-law.com



Akorede Adelupe
Associate,
Dispute Resolution
akorede.adelupe@templars-law.com

TEMPLARS TRANSCRIPTS: Investigations, White Collar and Compliance Digest

Beneficial Ownership (BO) to restrict Corporate Vehicles, Money Laundering and Terrorism: Overview of the CBN'S Guidance on BO of Legal Person, 2023

Introduction

On 12 January 2023, the Central Bank of Nigeria ("CBN") issued its Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements ("the Guidance"). The Guidance was developed by the CBN in furtherance of its [2022 anti-money laundering and anti-terrorism financing Regulation](#)¹ (click on the link to view our Article on the Subject). Specifically, its issuance is based on the increased use of corporate vehicles, such as companies, trusts, foundations, etc. to cover up and convert the proceeds of crime.

The Guidance only applies to Financial Institutions ("FIs") and its overall objective is to assist FIs in identifying and verifying the beneficial owners of corporate vehicles in line with the provisions of the anti-money laundering and anti-terrorism financing laws and regulations.

However, this increased regulatory requirement will impact both the FIs and customers (individual and corporate) and could impact existing and potential transaction structuring.

This commentary highlights the key provisions of the Guidance.

¹ 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.
[2022 anti-money laundering and anti-terrorism financing Regulation](#)

Beneficial Owner

The Guidance requires FIs to unveil the ultimate beneficial owner ("BO") of corporate vehicles. To this end, it defines beneficial owners as the natural person(s) who (i) ultimately owns, directly or indirectly, at least 5% of the issued shares of a legal person, (ii) ultimately exercise, directly or indirectly, 5% of the voting rights of a legal person, (iii) holds a right, directly or indirectly, to appoint or remove the majority of the directors or similar positions of the legal person, (iv) on whose behalf a transaction is being conducted, and/or (v) exercise significant influence or control, directly or indirectly, over the legal person.²

Identification and Verification of Beneficial Owner

The Guidance introduced a three-step approach to identifying and verifying a beneficial owner, namely: (i) first, identifying and verifying the natural persons who have ultimate controlling interests in a legal entity, (ii) second, in the event of doubt as to the person with controlling ownership interest or where no natural person exerts control through ownership interest, identify and verify the natural persons exercising control of the legal person or arrangement through other means, and (iii) third, where a natural person is not identified, FIs are required to verify and take reasonable measures to verify the identity of the relevant natural person who holds senior management position in the legal person.

Responsibilities of Financial Institutions and Risk Management System and Assessment of Beneficial Owners³

In line with the CBN Regulations, FIs are required to do the following: (a) identify and manage money laundering, terrorism financing, and proliferation financing (ML/TF/PF) posed by corporate vehicles, (b) understand the structure of their customer's business and its ownership, (c) identify and take responsible steps to verify the identity of a beneficial owner, board, senior management, settlor, trustee, beneficiary and other positions denoting control using relevant information or data obtained from reliable sources, (d) apply Enhanced Due Diligence on complex corporate vehicle structures that pose higher ML/TF/PF risks, and (e) keep and update periodically all relevant documents used in determining a beneficial owner and ensure all relevant authorities have access to the information of a beneficial owner.

Additional Measures for Politically Exposed Persons (PEP)

For beneficial owners who are politically exposed persons (PEP), FIs are required to put in place additional measures to manage their risks. This includes obtaining senior management approval before establishing or continuing with the banker-customer relationship, establishing the beneficial owner's source of funds and source of wealth, and conducting enhanced ongoing monitoring of the customer relationship.

Record keeping⁴ and the Beneficial Ownership Register

FIs are mandated under the Guidance to, using the records or information collected through Customer Due Diligence, create a register of beneficial owners of its customers that are legal persons and legal arrangements. In event of discrepancy or inconsistency

² Paragraph 5 of the Central Bank of Nigeria's Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements (the "Guidance").

³ Paragraph 8 of the Guidance.

⁴ Paragraph 9 of the Guidance.

between the information in the public register and the information provided by a beneficial owner, FIs are mandated to report such to the Corporate Affairs Commission.⁵

Finally, FIs also have the responsibility of ensuring that the information gathered on beneficial owners is maintained for at least five years following the termination of the business relationship or after the date of the occasional transaction.⁶ FIs are to render periodic returns to the CBN on their customers along with details of beneficial owners of their customers that are legal persons and legal arrangements.

Conclusion

The Guidance is one of the steps taken in recent times by the CBN to strengthen the fight against ML/TF/PF.

Based on the increased use of corporate vehicles to shroud the proceeds of crimes, the issuance of the Guidance is timely. However it will also, potentially, impact legitimate transactions that utilise nominee shareholders/trust arrangements.

⁵ Paragraph 10.3 of the Guidance.

⁶ Paragraph 12.1 of Guidance.