



Central Bank Of Nigeria

Financial Policy and Regulation Department
Central Business District, Cadastral Zone,
P.M.B 0187, Garki, Abuja
Telephone: +234 (0) 9 462 37401
E-mail: fprd@cbn.gov.ng
Website: www.cbn.gov.ng

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Circular to all Banks and Other Financial Institutions

GUIDANCE ON ULTIMATE BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

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 requires financial institutions to understand the structure of legal persons and legal arrangements and undertake customer due diligence measures to mitigate the risks of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction.

Consequently, financial institutions are required to unveil the beneficial owners of legal persons and legal arrangements in line with provisions of extant AML/CFT laws and regulations.

Therefore, the CBN has developed a **GUIDANCE ON ULTIMATE BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND LEGAL ARRANGEMENTS** to assist financial institutions in implementation of such measures.

This Guidance is hereby released for immediate compliance by all financial institutions under the supervisory purview of the CBN.

A handwritten signature in blue ink, appearing to read 'Chibuzo A. Efofi', written over a horizontal line.

CHIBUZO A. EFOFI
DIRECTOR, FINANCIAL POLICY AND REGULATION DEPARTMENT



CENTRAL BANK OF NIGERIA

GUIDANCE ON ULTIMATE BENEFICIAL OWNERS OF
LEGAL PERSONS AND LEGAL ARRANGEMENTS

APPROVED

JANUARY 2023

ACRONYMS

BO	Beneficial Ownership
CBN	Central Bank of Nigeria
CBN AML/CFT/CPF Regulations	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,
CAC	Corporate Affairs Commission
CDD	Customer Due Diligence
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FIs	Financial Institutions
MEMART	Memorandum and Articles of association
ML	Money Laundering
MLPA	Money Laundering (Prevention and Prohibition) Act, 2022
NFIU	Nigeria Financial Intelligence Unit
TF	Terrorism Financing
PEP	Politically Exposed Persons
PF	Proliferation Financing

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1.0 INTRODUCTION

1. Given the growing use of corporate vehicles, such as companies, trusts, foundations and other types of legal persons and legal arrangements by criminals to cover up and convert the proceeds of crime, global standards (Financial Action Task Force (FATF) demand that countries “*ensure that adequate, accurate and timely information on*” beneficial ownership is accessible to check corporate vehicles from being abused in the financial system.¹
2. Legal persons and legal arrangements are susceptible to abuse for money laundering and terrorist financing. Hence, the need to identify, verify and have credible and reliable information on the legal and beneficial owners of all corporate vehicles and entities; to ensure that such information is available and easily accessible in a timely manner by competent authorities.
3. This Guidance, which draws from global standards, is issued to financial institutions (FIs) under regulatory purview of the Central Bank of Nigeria (CBN) regulatory purview as defined under 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, (CBN AML/CFT/CPF Regulations). Considering the pivotal role that FIs play in the financial system to prevent abuse of the Nigerian financial system from laundering of the proceed of crime and financing of terrorism, it is important that they are guided in identifying the beneficial owners of legal persons and arrangements .

2.0 OBJECTIVE

1. The objective of this Guidance is to assist FIs in identifying and verifying the beneficial owners of legal persons and legal arrangements in line with extant AML/CFT/CPF laws and regulations.
2. This Guidance is not exhaustive and will be amended as necessary. Therefore, it should be read and applied in line with the relevant provisions of extant laws and regulations on AML/CFT and CPF.

3.0 APPLICABILITY

This Guidance applies to FIs under the regulatory purview of the Central Bank of Nigeria.

¹ FATF Guidance, Transparency and Beneficial Ownership (2014), Financial Action Taskforce (FATF), Paragraph 3, pg.3, See also Recommendation 24, Transparency and Beneficial Ownership of Legal Persons and Arrangement, FATF (2012-2022), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France

4.0 DEFINITION OF BENEFICIAL OWNER

1. Beneficial owner (BO) 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 legal arrangement.²
2. In line with FATF, consideration must be given to the **natural person(s)** who have ultimate (actual) ownership and control over the corporate vehicle, not necessarily the legal owner, or the person(s) entitled on paper to do so, but **natural person(s)** who exert effective control over the corporate vehicle, or on whose behalf the transaction is being conducted.³

5.0 DETERMINATION OF BENEFICIAL OWNERSHIP

1. Beneficial owner (BO) refers to the natural person(s) –
 - i. **who ultimately owns** - holds at least 5% of the issued shares in the legal person either directly or indirectly;
 - ii. **controls a customer and/or the natural person** (but not limited to) who:
 - a. exercises at least 5% of the voting rights in the legal person either directly or indirectly;
 - b. holds a right directly or indirectly, to appoint or remove majority of the directors or similar positions of the legal person;
 - iii. **on whose behalf a transaction is being conducted**; and/or
 - iv. **who exercise ultimate effective control over a legal person or legal arrangement** - exercise significant influence or control, directly or indirectly, over the legal person.
2. In determining a BO, FIs are expected to rely on source documents, such as the following:
 - (a) Certificate of incorporation
 - (b) Particulars of shareholders
 - (c) Memorandum and Articles of Association (MEMART)
 - (d) Minutes of meetings
 - (e) Resolutions
 - (f) Partnership agreements
 - (g) Annual returns/financial statements
 - (h) Bye-laws

² This is as defined in the MLPA and the CBN AML/CFT/CPF Regulations, 2022

³ FATF (2014) Guidance, Transparency and Beneficial Ownership, Financial Action Taskforce (FATF), Paragraph 15, pg.8

- (i) Constitutions
 - (j) Charters
 - (k) Trust deeds and trust registration documents
3. In addition to the information obtained from the customer, FIs are also expected to obtain BO information from a public register (e.g. as Corporate Affairs Commission “CAC”) and publicly available sources such as internet, print, electronic and social media.
 4. Consideration should also be given to relevant relationships which includes senior management, authorized signatories, persons with voting rights, nominee directors, partners, office holders, settlors, trustees and beneficiaries, persons having power of attorney over the entity, etc.
 5. FIs should distinguish between legal ownership and effective control, as the person who has legal ownership may not necessarily be the same person exercising control.
 6. A clear understanding of the customer’s governance and management structure will help FIs in identifying those individuals who have effective control over the customer, e.g. persons who dismiss or appoint those in senior management positions.
 7. In consonance with the definition of beneficial ownership, effective control will include ascertaining persons who exercise responsibility for senior management decisions, or on whose behalf a transaction(s) is being carried out.
 8. The FI should clearly distinguish between a person acting on behalf of a customer and where the person has control over the affairs of the customer.
 9. Where a person has authority to act on behalf of a customer, this does not necessarily amount to beneficial ownership of the customer, for instance, authorized signatories to an account.

6.0 IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNER

1. FIs are to carry out necessary customer due diligence (CDD) when identifying and verifying BO, particularly at the on-boarding stage, based on the risk-assessment of the customer and its BO, and must take all reasonable measures in verifying the information on the BO.
2. In identifying and verifying legal persons, FIs are required to adopt a three-step cascade approach in Regulation 21 of the CBN AML/CFT/CPF Regulations as detailed below:

- (a) identify and verify the natural persons, where they exist, that have ultimate controlling ownership interest in a legal person, taking into cognizance 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.
 - (b) In the event of doubt as to the persons 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.
 - (c) where a natural person is not identified, FIs shall identify and take reasonable measures to verify the identity of the relevant natural person who holds senior management position in the legal person.
3. For legal arrangements, identify and verify the identity of the settlor, the trustee, the 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.
 4. FIs in verifying the identity of BO, must use reliable and independent documents from sources identified in Sections 5.2 and 5.3 and any other reliable sources.

7.0 RED FLAGS FOR IDENTIFICATION OF BENEFICIAL OWNERS

Below are some red flags/indicators for identifying BOs:

- An extract of a shareholder registry showing ownership;
- Any nominee agreement that shows who exercises real control behind a shareholder arrangement;
- A shareholders' agreement that shows a natural person is able to control the shares of more than one shareholder, effectively giving control;
- Documentary evidence that a natural person is able to exercise a dominant influence over a legal person;
- Documentary evidence that the natural person has the power to appoint senior management;
- Documentary evidence (for example, an employment contract) that a director or employee is able to influence a legal person; and
- Documentary evidence of exercise of dominant influence over the transactions of the legal entities/arrangements.

8.0 RESPONSIBILITIES OF FIs WITH RESPECT TO BENEFICIAL OWNERSHIP OBLIGATIONS

1. In line with the provisions of the CBN AML/CFT/CPF Regulations and global best practice, the responsibilities of FIs with respect to beneficial ownership of their customers include but are not limited to the following.
 - (a) To identify and manage ML/TF/PF risks posed by legal persons and legal arrangements;
 - (b) To understand the nature of the customer's business, its ownership structure; taking into cognizance the complex ownership structure where shareholders are multiple legal persons, or complex arrangements in different nominee shares, which when aggregated gives a controlling ownership in the entity. In such circumstances, the FI is required to identify the natural person(s) with ultimate control.
 - (c) To identify and take reasonable steps to verify the identity of a BO, board, senior management, settlor, trustee, beneficiary and other positions denoting control using relevant information or data obtained from reliable sources to satisfy itself that it has knowledge of the BO(s) of the customer;
 - (d) To apply Enhanced Due Diligence (EDD) on complex corporate vehicle structures that pose higher ML/TF/PF risks;
 - (e) To ensure records of all relevant documents used in determining the BO for legal persons or legal arrangements are kept and updated periodically; and
 - (f) To ensure that relevant authorities have timely access to BO information.

9.0 RISK MANAGEMENT SYSTEM AND ASSESSMENT OF BENEFICIAL OWNER

1. FIs should apply a risk-based approach in the identification and verification of BOs.
2. Measures to be applied should be on the risk sensitive basis and should be set out in the FI's AML/CFT/CPF framework.
3. FIs should conduct enhanced CDD on BOs that pose higher risk and file a suspicious transaction report with the Nigerian Financial Intelligence Unit (NFIU) if there are reasonable reasons to suspect money laundering or terrorism financing.

4. FIs should establish AML/CFT/CPF internal policies and procedures to mitigate identified risks relating to BO.
5. Financial institutions should have effective systems to determine whether a beneficial owner is a politically exposed person (PEP) or a family member or close associate of a PEP. Where a BO is determined to be in one of these categories, the financial institution must take additional measures to manage the risk. Such measures include obtaining senior management approval before establishing or continuing with the customer relationship, establishing the beneficial owner's source of funds and source of wealth, and conducting enhanced ongoing monitoring of the customer relationship.

10.0 BENEFICIAL OWNERSHIP REGISTER

1. FIs are expected to use the records or information collected through CDD or other sources to create a BO register of its customers that are legal persons and legal arrangements.
2. FIs are expected to ensure BO information in their register is periodically reviewed and updated annually or when there are changes.
3. FIs are expected to flag and report inconsistency or discrepancies between the BO information in the public register and the BO information in their records to the Corporate Affairs Commission (CAC) through the following links:
 - (a) <https://forms.office.com/r/Gs8UprwEdT>; and
 - (b) Email: pscverification@cac.gov.ng

11.0 ACCESS TO INFORMATION BY COMPETENT AUTHORITIES

1. FIs shall be required to provide, on request, information on BOs to the CBN and other competent authorities identified under the MLPPA.
2. FIs shall be required to render periodic returns to the CBN on their customers along with details of beneficial owner(s) that are legal persons and legal arrangements in the prescribed format and frequency.

12.0 RECORD KEEPING

1. In line with the extant AML/CFT/CPF laws and regulations, FIs are required to:
 - a) keep all records of BOs obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken, either in electronic or written form for at least five years following the termination of the business relationship or after the date of the occasional transaction.
 - b) ensure that documents, data or information collected under the CDD process are kept up-to-date and remain relevant, by undertaking ongoing monitoring and reviews of existing records, particularly for higher risk categories of customers.