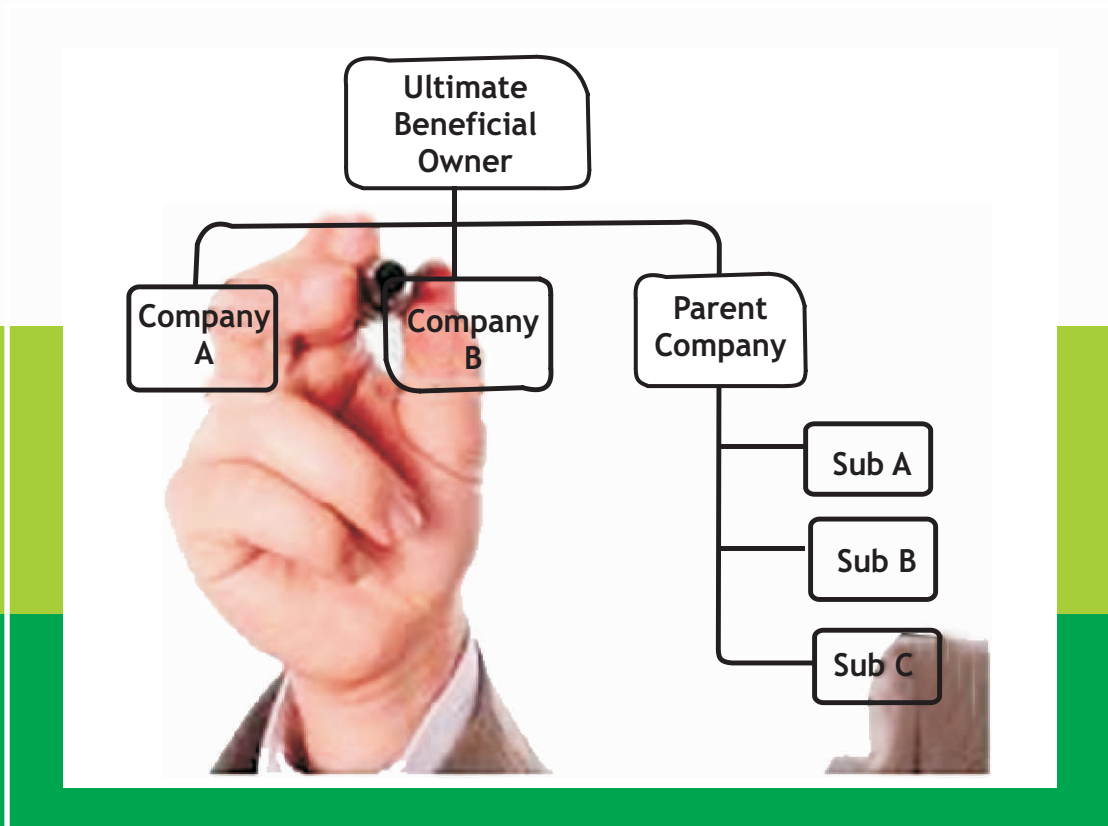




CIVIL SOCIETY LEGISLATIVE ADVOCACY CENTRE



NIGERIA COUNTRY REPORT: AN ASSESSMENT OF NIGERIA'S BENEFICIAL OWNERSHIP TRANSPARENCY LEGAL FRAMEWORK

CISLAC AT A GLANCE

Civil Society Legislative Advocacy Centre (CISLAC) is one of the major civil society organizations in Nigeria with a primary focus on legislation and legislative processes. As a non-governmental and non-profit organization, working on Policy and Legislative Advocacy in the areas of good governance, anti-corruption, transparency and accountability, CISLAC engages in policy advocacy, civil society capacity building and media engagement. It has her headquarters in Abuja, Nigeria with offices in Kano, Adamawa and Yobe States as well as Liaison/Contact points in other parts of Nigeria and abroad. We undertake research, advocacy and citizen's sensitization.

CISLAC as the National contact for Transparency International in Nigeria is a part of the Open Government Partnership and is implementing a project on Supporting Beneficial Ownership Transparency Champions in Nigeria. Supporting Beneficial Ownership Transparency is a project that seeks to support the realization of commitments made by Nigeria, Ghana and Kenya at the London Anti-Corruption Summit in May 2016 on establishing public beneficial ownership registers. This project is being implemented by Transparency International Chapters in three countries, supported by Transparency International (TI) with funds from The Department for International Development (DFID). The project aims to increase awareness among CSOs and the public on issues of Beneficial Ownership; advocate for the inclusion of beneficial ownership components in relevant government Ministries, Departments and Agencies (MDAs) processes and the private sector to increase transparency in governance. The project most importantly, seeks to advocate for the establishment of a register of Beneficial Owners of companies doing business in Nigeria.

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INTRODUCTION

Grand corruption cases, facilitated by lack of transparency in beneficial ownership, have been tainting the reputation of Nigeria for long years. At the same time Nigeria has been one of the most prominent promoter of international anti-corruption efforts among developing countries and especially among African countries.

The country had a key role in formulation and adoption of a resolution on Facilitating international cooperation in asset recovery and the return of proceeds of crime by the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) in 2015. At the 2016 London Anti-Corruption Summit, Nigeria was one of the five sub-Saharan countries that made anti-corruption commitments and actually rather ambitious ones. These commitments include increasing beneficial ownership transparency and establishing a public central registers of beneficial ownership. In its Open Government Partnership national action plan (2017-2019) Nigeria committed to establish a public register of Beneficial Owners of Companies.

Upon our president's return from the anti-corruption summit, Nigeria joined the Open Governance Initiative in July 2016. An Open Government Steering committee was set up with the secretariat under the watch of the Federal Ministry of Justice. OGP in Nigeria is led by a National Steering Committee Co-chaired by the Attorney General of the Federation & Minister of Justice and the Executive Director of Media Rights Agenda, and made up of members of government, private sector and Civil Society Organisations. The OGP secretariat which is currently headed by the Senior Adviser on Justice Reform worked with relevant stakeholders to develop and subsequently submitted the Nigerian 1st National Action Plan (NAP) in December 2016. The NAP is made up of 14 commitments across 4 thematic areas namely: Fiscal Transparency, Anti-Corruption, Access to Information and Citizen's Engagement. The plan is currently being implemented by relevant Ministries, Departments and Agencies.

As part of the implementation of the National Action plan, the Nigerian Corporate Affairs Commission (CAC) and Ministry of Justice in collaboration with other government departments are currently amending the law that regulates companies registration and reporting in Nigeria, known as the Companies and Allied Matters Act (CAMA) to provide for Beneficial Ownership Transparency among companies doing business in Nigeria among other things. This reviewed bill is awaiting approval by the Federal Executive Council for presentation, discussion and passage by the National Assembly.

The first effort at implementing beneficial ownership in Nigeria was the Nigeria Extractive Industry Transparency Initiative (NEITI) pilot along with other 11 Extractive Industries Transparency Initiative (EITI) implementing countries which resulted in the adoption of Section 2.5 of the 2016 EITI standard, this required governments of implementing countries to request extractive companies to provide beneficial ownership information in their EITI audit reports by 2020, starting with the development of a roadmap for that implementation effective January 2017. This roadmap has been completed and currently being implemented by NEITI.

The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) published its latest Mutual Evaluation Report on Nigeria in 2009 and found Nigeria largely “non-compliant” with the Financial Action Task Force (FATF)'s recommendations on beneficial ownership. The next GIABA review of Nigeria is not scheduled yet, but the country's money-laundering prevention laws and practice will be reviewed in the UNCAC framework in 2019. The present report uses the FATF Recommendations as a benchmark of beneficial ownership transparency and identifies country-specific strengths and weaknesses in current legal framework of Nigeria. The report focuses on a selection of topics and does not purport to be as comprehensive as the GIABA/FATF mutual evaluation reports.

The purpose of the report is to highlight outstanding shortcomings of Nigerian beneficial ownership transparency laws and practice, as well as to increase awareness and understanding of civil society, government, business, and law enforcement communities of these rules and issues where further reforms are needed. With this report the Civil Society Legislative Advocacy Centre would like to contribute to the effective implementation of the ambitious beneficial ownership commitments of Nigeria.

MAIN FINDINGS

Nigeria has conducted a national risk assessment and hopefully it has identified high-risk areas in which domestic and foreign corporate vehicles are being used for criminal purposes, but the report has not yet been published or communicated to financial institutions or to designated non-financial bodies and professions. The main findings of the present report are the following:

The Nigerian anti-money laundering law defines beneficial ownership, but unfortunately the definition does not cover control through other means in addition to legal ownership. It is a further short-coming that the company law does not cover the issue of beneficial ownership of private companies.

The country performs the worst in the area of acquiring beneficial ownership information. According to the legislation in force, beneficial owners can hide behind legal person members of a company without being identified. There are no legal requirements for Nigerian companies to maintain information on beneficial ownership of their shares within Nigeria. Neither are there legal requirements for beneficial owners/shareholders to inform the company of changes in share ownership. Moreover, public companies may conduct verification of ownership information of shares, but it is not mandatory.

Nigeria has not established a central register of beneficial ownership information yet and there are no clear rules on access for all law enforcement bodies and tax agencies to beneficial ownership information.

Beneficial ownership information of trusts is one of the areas where the assessment shows the best results. At the same time concept of “shadow director” and the possibility of using nominee shareholders are detrimental to beneficial ownership transparency. The other area where the legislation is strong are the beneficial ownership rules that have to be applied by financial institutions and designated non-financial businesses and professions.

International cooperation rules could be improved and a central register, if foreign competent authorities were allowed to access, could significantly contribute to it. In addition to the central register - or as a function of it - a data-sharing platform where domestic authorities could share beneficial ownership information would be helpful.

SCORES

The following scores show how much the Nigerian laws match the ten beneficial ownership principles. These results are based on the findings of the present report.

Principle 1: Beneficial ownership definition	75%
Principle 2: Identifying and mitigating risk	50%
Principle 3: Acquiring accurate beneficial ownership information	13%
Principle 4: Access to beneficial ownership information	29%
Principle 5: Beneficial ownership of trusts	75%
Principle 6: Access to beneficial ownership of trusts	50%
Principle 7: Duties of businesses and professions	79%
Principle 8: Domestic and international cooperation	58%
Principle 9: Beneficial ownership information and tax evasion	67%
Principle 10: Bearer shares and nominees	69%

RECOMMENDATIONS

Beneficial Ownership Definition

- Introduce definition of beneficial ownership for the purposes of the CAMA and extend the 10% substantial ownership reporting requirements to all owners and beneficial owners and apply the same approach to the 5% ownership reporting threshold imposed by the SEC Rules applicable to public companies.
- Introduce requirements of disclosing beneficial ownership to private companies.
- Extend the definition of beneficial ownership to control through other means, in addition to legal ownership.
- Clarify the term “legal arrangement” used under the MLA 2011 (Amended) and its regulations to capture diverse business relationships through which a person could be ultimate owner, controller or beneficiary of an arrangement.

Identifying and mitigating risk

- Publish the National Risk Assessment Report online.
- Communicate the results of the risk assessment to financial institutions and relevant DNFBPs.

Acquiring Beneficial Ownership Information

- Amend CAMA to require all companies to carry out further enquiries to ascertain the ultimate beneficial owners of the shares held by the natural and legal owners of the company. Maintain and regularly update such information.
- Introduce in CAMA requirement for all shareholders to declare to the company if they own shares on behalf of a third person and make mandatory the disclosure of the beneficial owner of the shares.
- Introduce in CAMA requirement of beneficial owners and shareholders to inform the company regarding changes in share ownership.
- Extend the obligation of legal entities on maintaining beneficial ownership information to include all natural persons who exercise ownership of control of the legal entity.

Access to Beneficial Ownership Information

- Establish a central register of beneficial ownership information and provide access to it both for the public and competent authorities. The central register should contain all relevant beneficial ownership information: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised. The registry authority should be obliged to conduct independent verification of the information provided by legal entities regarding ownership or control. Legal entities should be required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/shareholders) immediately or within 24 hours after the change.
- Amend legislation to explicitly provide access for all law enforcement bodies and tax agencies to beneficial ownership information.
- Specify a timeframe (e.g. 24 hours) in law within which competent authorities can gain access to beneficial ownership information.

Beneficial Ownership Information of Trusts

- In the case of foreign trusts, trust and company service providers should be required by law to proactively disclose to financial institutions/DNFBPs and to competent authorities information about the parties to the trust.
- Introduce beneficial ownership transparency rules for non-professional trustees such as family members or friends of the settlor.

Access to Beneficial Ownership Information of Trusts

- Establish a registry in Nigeria which collects information on trusts.
- Specify a timeframe (e.g. 24 hours) in law within which competent authorities can gain access to beneficial ownership information held by trustees.

Financial Institutions, Businesses and Professions

- Narrow and clarify in which cases financial institutions and DNFBPs can proceed with establishing business relationship or conducting business transactions if they haven't identified the beneficial owner.
- Require financial institutions when they conduct independent verification of the information on the identity of the beneficial owner to use not only reliable, but also independent sources and amend Section 3 (1) (c) of the MLA 2011 (Amended) accordingly.

Domestic and International Cooperation

- Regulate access of foreign authorities, financial institutions and DNFBPs to beneficial ownership information maintained by Nigerian authorities.
- Prepare and publish a guidance for foreign authorities, financial institutions and DNFBPs on how to access beneficial ownership information in Nigeria.
- Improve the access of domestic authorities to beneficial ownership information by setting up a centralised database, such as a central beneficial ownership registry.

Beneficial Ownership Information and Tax Evasion

- Improve the access of tax authorities to beneficial ownership information by setting up a centralised database, such as a central beneficial ownership registry.

Bearer Shares and Nominees

- Prohibit the incorporation of companies using nominees.
- Prohibit the use of nominee directors.

1. BENEFICIAL OWNERSHIP DEFINITION

WHY IS THIS IMPORTANT?

An adequate legal definition of beneficial ownership establishes the framework from which all legal responsibilities and obligations emerge. A strong and clear definition assists relevant stakeholders, such as competent authorities or entities with reporting obligations, to understand the scope of their duties. Weak definitions lead to weaknesses in the regulatory and enforcement framework, and to uncertainty in the duties and obligations of reporting entities.

An adequate definition of beneficial ownership in national legislation should focus on the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person, rather than just the persons who are legally (on paper) entitled to do so. It should also cover those who exercise de facto control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.¹

WHAT SHOULD BE IN PLACE?

Top scoring countries define a beneficial owner as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means in addition to legal ownership. Lesser scoring countries may define beneficial owners as natural persons, for example owning a certain percentage of shares, but there is no mention of whether control is exercised directly or indirectly or if control is limited to a percentage of share ownership. Lowest scoring countries have either no legal definition of beneficial ownership or the control element is not included.

FINDINGS

Score: 75%

The Nigerian anti-money laundering legislation² defines beneficial ownership as:

- a) The natural person who ultimately owns or controls a customer;
- b) The natural person on whose behalf a transaction is being conducted; and
- c) A person who exercises ultimate effective control over a legal person or arrangement.

The Securities and Exchange Commission Rules and Regulations also define beneficial ownership in the context of securities and also provides for that “all securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes,

¹Transparency International, July 2015.

²The Money Laundering (Prohibition) (Amendment) Act No. 11, 2011 (MLA 2011 (Amended) in Section 25 of the principal act. The same definition is included in Section 132 of the Central Bank of Nigeria Anti-Money laundering/Combating the Financing of Terrorism Regulations for Banks and Other Financial Institutions (CBN AML/CFT Regulations) and in Section 33 of the Anti-Money laundering/Combating the Financing of Terrorism (AML/CFT) Regulations for Designated Non-Financial Business and Professions (DNFBPAML/CFT Regulations).ectors.

shall be aggregated in calculating the number of securities beneficially owned by such person”
The Companies and Allied Matters Act (CAMA)⁴ does not define “Beneficial Owner” but imposes ownership disclosure requirements on individuals holding at least 10% of the shares/voting rights in public companies. To facilitate beneficial ownership due diligence enquiries, Section 94 of CAMA empowers public companies to require its members to provide, upon request, a written statement setting out: (i) the capacity in which they hold the company shares, (ii) where they hold the shares other than as beneficial owner, and (iii) provide the particulars of the identity of the persons interested in the shares.

The written statement is also to indicate whether the persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares. Once the company obtains the requested information, it is obligated to enter the fact that the enquiries were made and the information gathered as a result of the enquiry against the name of the shareholder in the register of members. It is key to note however that, CAMA does not make such enquiries by public companies mandatory nor does it extend the requirement to private companies.

The SEC Rules issued pursuant to the Investments and Securities Act 2007 (ISA 2007), which are applicable to public companies, contain a more robust definition of “Beneficial owner” of shares as it contemplates situations where a person, whether directly or indirectly, exercises voting power or investment power over such shares. In addition, the definition of “Beneficial owner” under the SEC Rules is drafted broadly to capture instances where a person directly or indirectly creates or uses any arrangement, agreement or device with the purpose or effect of (i) divesting such person of beneficial ownership of a security or (ii) preventing the vesting of such beneficial ownership, as part of a plan to evade the reporting requirements of any direct or indirect ownership of more than 5% of any class of securities.

RECOMMENDATIONS

- Introduce definition of beneficial ownership for the purposes of the CAMA and extend the 10% substantial ownership reporting requirements to all owners and beneficial owners and apply the same approach to the 5% ownership reporting threshold imposed by the SEC Rules applicable to public companies.
- Introduce requirements of disclosing beneficial ownership to private companies.
- Extend the definition of beneficial ownership to control through other means, in addition to legal ownership.
- Clarify the term “legal arrangement” used under the MLA 2011 (Amended) and its regulations to capture diverse business relationships through which a person could be

2. IDENTIFYING AND MITIGATING RISK

WHY IS THIS IMPORTANT?

An effective anti-money laundering regime requires a good and current understanding of how domestic and/or foreign corporate vehicles and other legal arrangements can be misused for criminal purposes within their jurisdictions, and an understanding of the areas that pose greater risks. A clear understanding of the types of legal persons and arrangements that exist in the country, their formation and registration processes, their different forms and structures and the risks they pose, is crucial to a substantive risk assessment. If they do not understand where the risks lie, countries are not able to effectively regulate and detect money laundering-related offences. For instance, in some countries, companies incorporated abroad may be frequently used for laundering the proceeds of corruption. The government needs, then, to ensure that the right policies are in place regarding the registration and operation of foreign companies in their countries. Risk assessments are important because the results help to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies. A national risk assessment is also a new requirement within the newly strengthened FATF recommendations, adopted in 2012.⁵

WHAT SHOULD BE IN PLACE?

High scoring countries have conducted recent risk assessments within the last three years, with the consultation of external stakeholders, such as financial institutions, Designated Non-Financial Bodies and Professions (DNFBPs), such as accountants, lawyers, real estate agents and casinos, as well as civil society organisations. The results, including information on high-risk areas, will have been communicated to financial institutions and DNFBPs and the results of the assessment would have been made public. The risk assessment will, at a minimum, identify specific sectors or areas at high risk that require enhanced due diligence measures.

FINDINGS

Score: 50%

A press release on the official website of the Economic and Financial Crimes Commission (EFCC) indicates that the Nigeria Financial Intelligence Unit (NFIU) on May 26, 2016 gave a briefing on the findings of the Nigeria National Risk Assessment Report on Money Laundering and Terrorist Financing. Coordinated by the NFIU, Nigeria launched its first National Risk Assessment in 2013⁶ and presumably concluded this assessment exercise in the first half of 2017.⁷ According to the International Monetary Fund's Article IV Consultation report twenty-six institutions/agencies were involved in the exercise, including law enforcement agencies such as the Economic and Financial Crime Commission (EFCC), the Independent Corrupt Practices and

The FATF recommendations, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

<https://efccnigeria.org/efcc/news/1933-nfiu-director-advocates-unity-in-risk-assessment>

IMF Country Report No.16/101 - Press release and staff report and statement by the Executive Director for Nigeria for the year 2016 (IMF Article IV Report) under its section on National Risk Assessment (NRA) on Money Laundering and Financing of Terrorism (ML/FT), page 45, at <https://www.imf.org/external/pubs/ft/scr/2016/cr16101.pdf>

Other Related Offense Commission (ICPC), and Nigeria Customs Service; supervisory bodies such as the Central Bank of Nigeria (CBN); and the private sector.⁸ Although, no further information was provided on the particular stakeholders which were consulted, compliance department units of several financial institutions confirmed to CISLAC that their banks were consulted during the exercise.

CISLAC was unable to obtain a copy of the report to ascertain whether the money laundering risks reviewed extend to those posed by legal persons and arrangements. The press release on the EFCC's website however indicated that the major money laundering threats identified in the report were bribery and corruption, pipeline vandalism, drugs trafficking, kidnapping for ransom and cash smuggling among others. The report is yet to be published. As much as it was possible to ascertain from government communications the findings are yet to be shared with financial institutions and relevant DNFBPs.

RECOMMENDATIONS

- Publish the National Risk Assessment Report online.
- Communicate the results of the risk assessment to financial institutions and relevant DNFBPs.

3. ACQUIRING BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Information on beneficial ownership should be adequate – that is, sufficient to identify the beneficial owner. This means that the information should contain the full name of the beneficial owner, an identification number, their date of birth, nationality, country of residence and an explanation of how control is exercised. Companies should ensure that the actual beneficial owners are identified, not just the legal owners. The information needs to be accurate and current, both at the time⁹ the legal entity is created and over time. This means that information about all changes in the ownership and control structure should be updated promptly. Companies should therefore be able to request information from shareholders to ensure that the information held is accurate and up-to-date and shareholders should be required to inform the company about changes to beneficial ownership.

The information must be available in the jurisdiction where the company is incorporated, even when, as is often the case, a company does not have a physical presence there. An absence of information in the jurisdiction of incorporation makes it difficult for supervisors and law enforcement authorities to obtain information when necessary.

WHAT SHOULD BE IN PLACE?

Top scoring countries require legal entities to maintain information on all natural persons who exercise ownership or control of the legal entity, and that information needs to be maintained within the country of incorporation regardless of whether the legal entities have or do not have a physical presence in the country. The law would require shareholders to declare if control is exercised by a third person and there would be a requirement in place for beneficial owners and shareholders to inform the company when there are changes in ownership, or control.¹⁰

Mid scoring countries may require legal entities to maintain information on natural persons who own or control shares but only in certain cases would shareholders need to declare if control is exercised by a third person. Lowest scoring countries will have no requirement for legal entities to hold beneficial ownership information, nor would nominee shareholders have to declare if they own shares on behalf of another person, nor if there is a change in the ownership of those shares.

Transparency International, Ending secrecy to end impunity, tracing the beneficial owner, February 2014, www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial. For the full scoring criteria see Annex 1 on the methodology.

FINDINGS

Score: 13%

Financial Institutions and Designated non-financial institutions

Only legal entities subject to Anti- Money Laundering obligations (i.e. Financial Institutions and Designated non-financial institutions) are required to collect, verify and maintain information on the identity of beneficial owners of customers, legal persons and arrangements.¹¹

Designated non-financial institutions are defined by the Money Laundering (Prohibition) Act 2011 (MLA) as including 'dealers in jewellery, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets and such other businesses as the Federal Ministry of Industry, Trade and Investment or appropriate regulatory authorities may from time to time designate'.

Financial institution is defined by the MLA to include 'banks, body corporates, associations or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institution, debt factorization and conversion firm, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment, leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank or other appropriate regulatory authorities may from time to time designate'.

Beneficial ownership information collected by such legal entities is required to be retained for a minimum period of (5) years after the closure of the account or the severance of the business relations with the customer.¹² The information must be communicated to relevant law enforcement agencies on demand.¹³

Beneficial ownership information held by companies

All Nigerian companies are required to file changes in their shareholders, shares held by such shareholders and their directors at the Corporate Affairs Commission (CAC) - in the case of a Company having a share¹⁴. A company's corporate file at the CAC will remain active until the company is liquidated or the company's name is struck off the register at the Corporate Affairs Commission.¹⁵ Furthermore, every Nigerian company (whether private or public) is required to have a register of shareholders/members which contains information setting out the names and addresses of the members, the number and class or type of shares held by each shareholder, the amount paid or agreed to be paid on each share, the date of their registration as members as well as the date they ceased to be members of the company.¹⁶

Under Nigerian law, only natural and legal persons can be members of a company and there are no mandatory requirements to carry out further enquiries to ascertain the ultimate beneficial owners of the shares held by these natural and legal persons. It means that in case a legal person is member of a company and there is no further enquiry into the beneficial owner of the legal person member,

then beneficial owners may remain unidentified through this structure.

Although, CAMA fails to specifically prescribe the length of time, ownership and control related information should be retained by companies, company accounting records are required to be kept for a minimum of six (6) years.¹⁷

As stated earlier, public companies may opt to conduct verification due diligence on ownership information provided to ascertain beneficial interest in the shares. In so doing, they may request for information on the capacity in which a member holding at least 10% of the shares of the company, holds the shares. The enquiries would seek to obtain information on the identity of the ultimate beneficiary and the details of any agreement or arrangement relating to the exercise of the rights in the shares. It is key to note that carrying out this due diligence enquiry is not mandatory.

There are no legal requirements for Nigerian companies to maintain information on beneficial ownership of their shares within Nigeria. Neither are there legal requirements for beneficial owners / shareholders to inform the company of changes in share ownership. However, general ownership and control information requirements apply as, companies are statutorily required to file changes in shareholding, shareholders and their directors at the CAC. They are also required to maintain statutory registers of shareholders, notices of beneficial interests in shares received under Section 95 of CAMA and director's interests in shares of the company. These registers along with other registers must be kept at the registered office of the company within Nigeria and be available for inspection during business hours by the members of the company without charge and by any other person upon the payment of a prescribed fee.¹⁸

Beneficial ownership information held by public companies

Public companies may request members to declare to the company if they own shares on behalf of a third person if the member holds at least 10% of the shares of the company. However, there is no requirement to identify and register the beneficial owner of the shares owned by the shareholder.

It is an offence punishable on conviction with a fine of N25 for every day the offence continues or imprisonment for six (6) months for a member to fail to provide the requested information or for such members to knowingly or recklessly provide false information to the company.¹⁹

The SEC Rules, issued pursuant to the ISA 2007, impose reporting requirements where an individual holds directly or indirectly 5% or more of the shares of a public company. Rule 397 of

Section 3 (1) of the Money Laundering (Prohibition) (Amendment) Act 2011; Section 39 (3) (a) of the Investments of Securities Commission Act 2007; Part III of the AML/CFT Regulations for Designated Non- Financial Business and Professions; Part IV of the CBN AML/CFT Regulations for Banks and Other Financial Institutions; Schedule XI, Part A of the SEC Rules- AML/CFT Institutional Policy Framework; Schedule XI, Part C of the SEC Rules Know Your Customer Guidelines

Section 7(a) & (b) of the Money Laundering (Prohibition) (Amendment) Act 2011; Schedule XI Part C- Rule 24 (i) of the SEC Rules

Section 8 of the Money Laundering (Prohibition) (Amendment) Act 2011

Nigerian Companies' Registry - Section 35 and 129 of the Companies and Allied Matters Act 2004

Section 525 of the Companies and Allied Matters Act 2004

Section 83 of the Companies and Allied Matters Act 2004

the SEC Rules require registrars or security depositories to file information on the beneficial owners of 5% or more of the company's shares.²⁰

The SEC Rules also require registrars or security depositories to notify the Security and Exchanges Commission of any transaction that brings the beneficial ownership of shares in the company to 5% or more as well as to notify it of subsequent transactions by holders of such shares within a five day period of becoming aware of the change in ownership.

Open Government Partnership

It is worth noting that on the back of the Federal Government's membership of the Open Government Partnership, apart from increased involvement of the citizenry in the fight against corruption (e.g. whistle blowing), there has been a push by the Nigeria Extractive Industries Transparency Initiative (NEITI) for the government to amend the provisions of the Petroleum Industry and Governance Bill and the CAMA, to include a mandatory requirement for companies in the extractive and other sectors to publicize the names and identities of their real owners. This information would then be entered into a public register of beneficial owners of companies in Nigeria.

RECOMMENDATIONS

- Amend CAMA to require all companies to carry out further enquiries to ascertain the ultimate beneficial owners of the shares held by these natural and legal owners of the company maintain and regularly update such information.
- Introduce in CAMA requirement for all shareholders to declare to the company if they own shares on behalf of a third person and make mandatory the disclosure of the beneficial owner of the shares.
- Introduce in CAMA requirement of beneficial owners and shareholders to inform the company regarding changes in share ownership.
- Extend the obligation of legal entities on maintaining beneficial ownership information to include all natural persons who exercise ownership of control of the legal entity.

Section 332 of the Companies and Allied Matter Act 2004.
Section 84 of the Companies and Allied Matters Act 2004
Section 94(4) of CAMA
Rule 397 of the SEC Rules

4. ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Government bodies responsible for anti-money laundering and control of corruption and tax evasion / avoidance, amongst others, need to have timely access to sufficient, legitimate and verified, and up-to-date information on beneficial ownership, in order for them to be able to conduct their work effectively. Obstacles to accessing information or delays in transferring the information make it harder for competent authorities to follow the money back to the source, and this increases the likelihood of impunity for those that have engaged in corrupt or illegal acts.

As an example, the US Department of Justice's June 2015 indictment of FIFA outlined in detail the methods and mechanisms, including the creation and use of shell companies and nominees, that were used to hide and transfer stolen funds. Significantly, the indictment explicitly states that these mechanisms were “designed to prevent the detection of their illegal activities, to conceal the location and ownership of proceeds of those activities, and to promote the carrying on of those activities”.²¹

WHAT SHOULD BE IN PLACE?

Top scoring countries explicitly state that all law enforcement bodies, tax agencies and the financial intelligence unit should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Higher scores are given for countries with a central beneficial ownership or company registry that includes all relevant information that grants access within 24 hours. Additional points are given to countries where this information is public. A public, central (unified) register is the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities.²² A central registry also supports the harmonisation of the country's legal framework, avoiding double standards.

Top scoring countries also have laws in place mandating the registry authority to verify the information against independent and reliable sources, and requiring legal entities to update the beneficial ownership information within 24 hours.

Lower scores are given to those with decentralised registries, with only partial information, and for those where competent authorities have access to information held by legal entities or other bodies, or who grant access only after a longer period of time. Lower scores are also given to countries where verification only happens in suspicious cases, and where legal entities are only required to update the beneficial ownership information over a longer period, or, indeed, over a non-specific timeframe.

United States District Court, Eastern District of New York, United States v Webb et al., 20 May 2015, www.justice.gov/opa/file/450211/download.
Transparency International, July 2015

FINDINGS

Score: 29%

In Nigeria there is no central beneficial ownership registry and companies are not required to disclose beneficial ownership to the CAC. As stated in the previous chapter, beneficial ownership information is sourced through decentralized sources such as beneficial ownership registers held by financial institutions and designated non-financial institution.

The general ownership information which can be obtained from the company registry includes: a) name of shareholder, b) shareholder's residential address, c) state of residence, d) city of residence, d) post office box number, e) email address, f) telephone number, g) number of shares held. The information provided is not subject to verification.

Every registrar should file with the SEC, the company and the securities exchange information on transactions bringing any beneficial ownership of shares in the company to 5% and any subsequent transactions by holders of 5% or more of the company shares within five (5) days of being aware of the change in ownership.²³

There are only some competent authorities explicitly mentioned in the anti-money laundering laws that can have access to beneficial ownership information. Each law regulating the work of a particular investigative or law enforcement agency has legal provisions to effect to access among others to beneficial ownership information.

Competent authorities are defined by the MLA 2011 as “any agency or institution concerned with combating money laundering and terrorist financing under the Act or under any other law or regulation”. Section 21 of the MLA states that the Director of Investigation or an officer of the Ministry of Industry, Trade and Investment, the EFCC or the National Drug Law Enforcement Agency is authorised to demand, obtain and inspect the books and records of a financial institution or designated non-financial institutions.

Where requests for copies of statutory registers are made by competent authorities as part of their investigative activities, such records must be provided to the authorities in a timely manner or within the timeframe indicated in the request letter issued by the authority. Competent authorities may make applications to the CAC for access to company corporate records. In practice, such requests for access to records are typically granted within 48 hours of making the application and paying relevant statutory fees.²⁴ Records containing verified beneficial ownership information must be produced on demand to competent authorities by financial institutions or designated non-financial businesses.

The public can access general ownership and control information, which is available at the CAC. A formal application and payment of a statutory fee is required before access is granted to review the physical corporate file of the target company.²⁵

Rule 397 of the Securities Exchange Commission (SEC) Consolidated Rules 2013
S.551 of CAMALFN 2004
Section 8 Money Laundering (Prohibition) (Amendment) Act 2011

RECOMMENDATIONS

- Establish a central register of beneficial ownership information and provide access to it both for the public and competent authorities. The central register should contain all relevant beneficial ownership information: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised. The registry authority should be obliged to conduct independent verification of the information provided by legal entities regarding ownership or control. Legal entities should be required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/ shareholders) immediately or within 24 hours after the change.
- Amend legislation to explicitly provide access for all law enforcement bodies, tax agencies and the financial intelligence unit to beneficial ownership information
- Specify a timeframe (e.g. 24 hours) in law within which competent authorities can gain access to beneficial ownership information.

5. BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trusts are the second most used vehicle for corruption, after companies.²⁶ Efforts to tackle money laundering must also tackle secrecy and misuse of trusts, foundations and other legal structures. Trusts enable property or assets to be managed by one person on behalf of another and one challenge to tackling the misuse of trusts is that control and ownership are explicitly separate. Multiple individuals with different statuses (settlor, beneficiary, trustee, for example) could qualify as beneficial owners, making it additionally difficult for law enforcement to follow money trails if not all relationships are captured.²⁷

WHAT SHOULD BE IN PLACE?

Top scoring countries require trustees to collect beneficial ownership information for the trusts they administer, including information on the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee) and the beneficiaries (who receive the funds).²⁸ Lower scoring countries typically require trustees to maintain information on only some parties to the trust, or only impose such obligations on professional trusts. In countries where domestic trusts are not allowed but the administration of foreign trusts is possible, high scoring countries require trustees to proactively disclose beneficial ownership information to financial institutions and DNFBPs with which they establish a relationship.

FINDINGS

Score: 75 %

The DNFBP AML/CFT Regulations impose reporting obligations on Trust and Company Service Providers (TCSPs) as well as non-profit organizations registered as trustees.²⁹ Non-professional trustees such as family members or friends of the settlor are not covered by law.

All Designated Non- Financial Business and Professions (DNFBPs) are required to undertake due diligence checks to verify the identity of their customers using both identification documents provided by such customers and data gathered from reliable independent sources. They are to understand the ownership and control structure of arrangements and determine the natural persons that ultimately own or control the customer.³⁰ All necessary records of transactions, both

World Bank/UNODC, 2011: 3

Transparency International, February 2014.

Transparency International EU Office, Fighting money laundering in the EU: From secret companies to public registries, January 2014, www.transparencyinternational.eu/wp-content/uploads/2014/01/TI-EU-Policy-Paper-Beneficial-Ownership.pdf.

Section 6(4) of the (AML/CFT) Regulations for Designated Non- Financial Business and Professions 2013

Section 10(5) of the (AML/CFT) Regulations for Designated Non- Financial Business and Professions 2013

domestic and international must be maintained for a least five (5) years following completion of the transaction or longer if requested by the NFIU in specific cases.³¹

Furthermore, the SEC Rules impose a requirement on trustees as capital market operators to obtain and verify the identities of the funder of the trust, signatories, protectors, beneficiaries, principal trustees and other controllers who have power to remove the trustees.³² The rules also require that information related to the trust arrangement be maintained for a minimum period of five (5) years.³³

Financial institutions and DNFBPs are required to undertake Customer Due Diligence measures to identify parties of domestic and foreign trusts when they establish with them customer relationship or provide them services.³⁴

RECOMMENDATIONS

- In the case of foreign trusts, trust and company service providers should be required by law to proactively disclose to financial institutions / DNFBPs and to competent authorities information about the parties to the trust.
- Introduce beneficial ownership transparency rules for non-professional trustees such as family members or friends of the settlor.

Section 31(2) of the (AML/CFT) Regulations for Designated Non- Financial Business and Professions 2013
Part C – Establishing Identity Trusts- Rule 23(D) © (ix) of the SEC Rules; Section 25 (b) (i) of the Securities and Exchange Commission (Capital Market Operators Anti-money Laundering and combating the Financing of Terrorism) Regulations, 2013
Part B- Customer Due Diligence- Maintaining Record on Transactions- Rule 6 (b) of the SEC Rules
Part C – Establishing the Identity of Quasi Corporate Clients- Rule 25 (b) of the SEC Rules; Part C – Rule 25(B)(ii)- Establishing the Identity of Quasi Corporate Clients - AML/CFT Manual for Capital Market Operators issued by the Securities and Exchange Commission; Section 10(2) of the (AML/CFT) Regulations for Designated Non- Financial Business and Professions 2013; Section 3 Money Laundering (Prohibition) (Amendment) Act 2011

6. ACCESS TO BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trustees should be required to share with legal authorities all information deemed necessary to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. This is necessary to identify or exclude individuals that are sought in relation to investigations. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs. Transparency International also believes that tax and law enforcement authorities should have timely, preferably immediate, access to the information (within 24 hours) held by trustees, but we have been unable to score this in this analysis.

WHAT SHOULD BE IN PLACE?

Top scoring countries have laws in place that allow competent authorities to request and access information on ownership and control of trusts held by trustees and other parties, such as financial institutions or DNFBPs. In high scoring countries, the law also clearly states which competent authorities are granted access. In lower scoring countries, competent authorities are not permitted access or only a limited number of authorities are granted access. Finally, additional points are given to countries that collect and maintain information on trusts in a registry. Lower scoring countries may have a registry that is either non-compulsory or does not collect adequate information to identify beneficial ownership.

FINDINGS

Score: 50%

There is no registry in Nigeria which collects information on trusts.

Competent authorities such as the Central Bank of Nigeria (CBN), Nigeria Financial Intelligence Unit (NFIU), Economic and Financial Crimes Commission (EFCC) are able to access information on trust arrangements through entities subject to AML/CFT legislation.

Anti-money Laundering Regulations of the Central Bank of Nigeria mandates financial institutions to 'comply promptly with requests made pursuant to current AML/CFT legislations and provide information to the Central Bank of Nigeria (CBN), Nigeria Financial Intelligence Unit (NFIU) and other competent authorities'. The Money Laundering (Prohibition) Act defines Competent authority as 'any agency or institution concerned with combating money laundering and terrorist financing under this Act or under any other law or regulation'. The agencies under

Clause 4(4) of the Central Bank of Nigeria (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013

the Act include the CBN, EFCC, and the National Drug Law Enforcement Agency.

As described at Principle 4, records containing verified beneficial ownership information must be produced on demand to competent authorities by financial institutions or designated non-financial businesses. The law does not define any timeframe for the provision of the information. In practice, such requests for access to records are typically granted within 48 hours of making the application and paying relevant statutory fees.

RECOMMENDATIONS

- Establish a registry in Nigeria which collects information on trusts.
- Specify a timeframe (e.g. 24 hours) in law within which competent authorities can gain access to beneficial ownership information held by trustees.

7. FINANCIAL INSTITUTIONS, BUSINESSES AND PROFESSIONS

WHY IS THIS IMPORTANT?

Corrupt figures require financial institutions to be willing to receive and transfer their money, and often seek out the help of professional intermediaries, such as accountants, lawyers and Trust and Company Service Providers (TCSPs) to facilitate the process. Corrupt money often then ends up in the hands of another set of Designated Non-Financial Business Professions (DNFBPs), such as real estate agents, casinos and luxury goods dealers. This is for two purposes: ultimately to enjoy the proceeds of their criminal activities; and to launder the money to allow it to enter the market later as seemingly “clean” assets.

As an example, two TCSPs based in Latvia acted as the nominee directors and shareholders for a number of companies involved in criminal activities ranging from defrauding governments and investors to arms dealing in Eastern Europe. They acted as nominees for hundreds of companies incorporated in jurisdictions that included the British Virgin Islands, Panama, Cyprus, New Zealand, the US, the UK and Ireland, many of whom were in turn nominal shareholders of many other companies.³⁷

In addition, a review conducted by the UK Financial Standards Authority in 2011 showed that 75% of the banks surveyed failed to carry out proper checks to detect and stop the proceeds of corruption.³⁸ In order to make it less lucrative and less easy to launder money, financial institutions and this group of professionals must be supervised so as to not be complicit in money laundering, and they must face sanctions if they do not comply with their obligations under law. Among other measures to curb money laundering, financial institutions and DNFBPs should be required to identify and verify the identity of the beneficial owners of clients when establishing a business relationship or conducting transactions for occasional customers, and to report all suspicious activities in accordance with existing anti-money laundering regulations.³⁹ Where financial institutions and DNFBPs cannot properly identify the client's ownership, they should not enter into a business transaction.

Furthermore, it is crucial that both financial institutions and DNFBPs conduct enhanced due diligence on clients who are Politically Exposed Persons (PEPs), individuals (and often relatives or close associates of individuals) who hold or have held a prominent public function, such as a head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials.⁴⁰

Alex Marriage, Secret structures, hidden crimes: Urgent steps to address hidden ownership, money laundering and tax evasion from developing countries, EURODAD, 2013, p. 12, <http://eurodad.org/files/integration/2013/01/Secret-structures-hidden-crimes-web.pdf>.
UK Financial Services Authority, Banks' management of high money laundering risk situations, June 2011, www.fsa.gov.uk/pubs/other/aml_final_report.pdf.
Transparency International, Transparency of legal entities and arrangements, May 2014, www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_BeneficialOwnership_EN.pdf.
Transparency International, Financial Jargon Buster, www.transparency.org/glossary#/beneficial-ownership.

WHAT SHOULD BE IN PLACE?

Financial institutions and DNFBPs should be required by law to identify the beneficial owners of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as TCSPs providing services to legal entities.

Higher scoring countries require financial institutions and DNFBPs to verify the beneficial ownership information of their customers and clients and in high-risk cases this should be done independently.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer or the beneficial owner is a domestic or a foreign PEP or a close associate of a PEP. If the financial institution or DNFBP cannot identify the beneficial owner, permission would not be given for the transaction to proceed in high scoring countries. High scoring countries require a suspicious transaction report to be submitted if they cannot identify the beneficial owner.

Financial institutions and DNFBPs should have access to beneficial ownership information collected by governments. High scoring countries would make that information available online, for free – for example within a beneficial ownership registry. Lower scoring countries would make it available online, upon registration or upon payment of a fee. Limited points are awarded to countries in which information is only made available upon request or in person.

Finally, high scoring countries permit the application of sanctions to financial institutions' directors and senior management.

Currently, there are big differences between the way financial institutions and businesses and professions are regulated, supervised and sanctioned. As a result, we separate the findings into two sections.

FINDINGS

Score: 79%

Financial institutions

As part of their Know Your Customer due diligence checks financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.⁴¹ Financial institutions are also required to verify the identity of beneficial owners identified. For this purpose they have to use “relevant information or data obtained from a

Section 15 of the CBN AML/CFT Regulations states that: A financial institution shall identify and take reasonable steps to verify the identity of a beneficial owner... including

- (a) for legal persons –
- (i) identifying and verifying the natural persons, where they exist, that have ultimate controlling ownership interest in a legal person...
- (b) for legal arrangements – such as trust arrangement, financial institutions shall identify and verify the identity of the settlor, the trustee, the protector where they exist, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate or effective control over the trust including through a chain of control or ownership

Section 3 of the MLA 2011 (Amended)

reliable source”.⁴² Independent verification of information on the identity of the beneficial owner(s) provided by clients is always required from financial institutions.⁴³

As part of their AML/CFT framework, all financial institutions are required to conduct on going due diligence and where appropriate, enhanced due diligence on all business relationships and shall obtain information on the purpose and intended nature of the business relationship of their potential customers.⁴⁴

Financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic Politically Exposed Person (PEP),⁴⁵ or a family member or close associate of a PEP. In these cases financial institutions have to put in place appropriate risk management systems and obtain senior management approval before establishing and during any business relationship with the Politically Exposed Person.⁴⁶

Financial institutions are generally required to identify the beneficial owner before proceeding with business transactions. However, there are certain circumstances under which a financial institution can commence a business relationship before verification of the identity of a customer. These circumstances are formulated rather laxly and as a matter of timing only in the following way: “financial institutions are permitted to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship, only where- (a) this can take place as soon as reasonably practicable; (b) it is essential not to interrupt the normal business conduct of the customer in cases of non-face-to-face business, securities transactions and others; or (c) the money laundering risks can be effectively managed”.⁴⁷ The effective management of money laundering risks in this case is limited to “measures such as (a) limitation of the number, types or amount of transactions that may be performed; and (b) the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship”.⁴⁸

A financial institution that fails to comply with the Customer Due Diligence measures, as required by the CBN regulations, is not permitted to open the account, commence business relations or perform the transaction and has to submit a Suspicious Transaction Report to the NFIU and such business relationship has to be terminated.⁴⁹

Financial institutions have no access to beneficial ownership information collected by public bodies such as the Securities and Exchange Commission.

In case a financial institution breaches money laundering rules its directors and employees can be sanctioned. The law imposes personal liability in the event of a breach of the customer due diligence requirements. The penalty can be conviction to imprisonment for a term not less than three (3) years or a fine of not less than N10,000,000.00 or both, in the case of an individual and N25,000,000.00 in the case of a body corporate.⁵⁰

Business and professions

The Special Control Unit against Money Laundering monitors, supervises and regulates the activities of DNFBPs⁵¹ in Nigeria and issued the DNFBP Regulations in 2013. Trust and

Company Service Providers are included in the definition of DNFBPs in the Regulations when they carry out or prepare for transactions for clients concerning the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person

DNFBPs, similarly to financial institutions are required to “verify the identity of customer using reliable, independent source documents, data or information” and “identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the DNFBP is satisfied that it knows who the beneficial owner is”.⁵² Brokers/custodians/agents which provide nominee account services have to maintain information on clients requesting nominee registration of securities. “The record shall be prepared in such a way that there is no doubt regarding the ownership of financial instruments”.⁵³

DNFBPs are required to perform enhanced customer due diligence measures for higher risk categories of customers including high risk business relationships assessed by the DNFBP based on the customer's individual risk situation, and the types of business relationships.⁵⁴

The same rules with the same shortcomings apply to DNFBPs as to financial institutions when they are required to identify the beneficial owner before proceeding with establishing business relationship or conducting business transactions.⁵⁵

Section 3 (1)(b) and (c) of the MLA 2011 (Amended); Section 15(1) and (6) of the CBNAML/CFT Regulations

Section 4 of the CBNAML/CFT Regulations for Banks and Other Financial Institutions

Section 25 of the MLA 2011 (Amended)

Section 3(7) of MLA 2011 (Amended); Sections 16 and 18 of the CBNAML/CFT Regulations

Section 25 (2) of CBNAML/CFT Regulations

Section 25 (4) of CBNAML/CFT Regulations

Section 27(1) and (2) of CBNAML/CFT Regulations

Section 16 (1)(f) and (2) of the MLA 2011 (Amended)

DNFBPs in Nigeria are

as from the commencement of the Money Laundering (Prohibition) Act, 2011:

(a) business outfits dealing in jewelries; (b) car dealers; (c) dealers in luxury goods; (d) chartered accountants;

(e) audit firms; (f) tax consultants; (g) clearing and settlement companies; (h) legal practitioners; (i) hotels; (j) casinos; and (k) supermarkets.

as well as, from the commencement of the Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013:

The DNFBP Regulations also state that if a DNFBP “is in the process of establishing a business relationship, and was unable to conclude the verification process because the customer refused to provide the required documents/ information, such by itself must be considered suspicious and must be reported to the NFIU”.

In case a DNFBP breaches money laundering rules its directors and employees can be sanctioned, similarly as financial institutions and their employees (see above).

RECOMMENDATIONS

- Narrow and clarify in which cases can financial institutions and DNFBPs proceed with establishing business relationship or conducting business transactions if they haven't identified the beneficial owner.
- Require financial institutions when they conduct independent verification of the information on the identity of the beneficial owner to use not only reliable, but also independent sources and amend Section 3 (1) (c) of the MLA 2011 (Amended) accordingly.

professions:

(a) Law firms, notaries, and other independent legal practitioners; (b) Accountants and Accounting firms ;
(c) Trust and Company Service Providers; (d) Estate Surveyors and Valuers; (e) Mortgage Brokers ; and (f) Non-Profit Organisations.

businesses:

(a) dealers in precious stones and metals; (b) dealers in Real Estate, Estate Developers, Estate Agents and Brokers;
(c) hospitality Industry; (d) Consultants and Consulting Companies; (e) Construction Companies; (f) importers and dealers in cars or any other automobiles; (g)
dealers in mechanized farming equipment and machineries; and (h) practitioners of mechanized farming.

Section 10 (2) (b) (c) of DNFBP Regulations

Rule 61 (2) (b) and (c) of SEC Rules; Part A and C of Schedule XI of the Sec Rules provide guidance on the customer due diligence and know your customer checks which brokers/custodians/agents re required to undertake to ascertain the beneficial owners of securities.

Section 15 of DNFBP Regulations

Sections 10 (2) and 18 (2) of DNFBP Regulations

23 (4) of the DNFBP Regulations

CASE STUDY

On 29 April 1998, Dan Etete (Nigeria's Minister of Petroleum Resources from 1995 to 1998) awarded an oil bloc (OPL) to a new player in the oil and gas industry, Malabu Oil & Gas Limited (Malabu). The award was made by Etete without following the due process of competitive bidding and in abuse of his office as a public official. Malabu, which was incorporated at the Corporate Affairs Commission on 24 April 1998 was beneficially owned by Etete. Using a fictional character - Kweku Amafegha, Etete owned a majority of the shares in Malabu and failed to publicly disclose the fact of his beneficial ownership.

Leveraging Etete's position and political clout, Malabu paid the Nigerian government only US\$2,050,000 of the US\$20,000,000 legally required to be paid as signature bonus for the issue of the license. In 2011, Shell Nigeria Exploration and Production Company (Shell), Nigerian Agip Exploration Limited (Eni), the Nigerian government and Malabu entered into back to back arrangements for the purchase of OPL 245. Under the arrangement, Shell and Eni signed a Resolution Agreement with the Nigerian government, which in turn executed a separate Resolution Agreement with Malabu. By virtue of the financial arrangement under the respective Resolution Agreements, Shell and Eni paid the Nigerian government a total of US\$1,300,000,000 for the acquisition of OPL 245 with about US\$1,092,040,000 of the sum transferred to Malabu and US\$207,960,000 retained by the Nigerian government.

Opaque deals like this, which rob citizens of the revenue that should have been generated from dealings with their natural resources, highlight the necessity for transparency and accountability in the Nigerian extractive industries sector.

8. DOMESTIC AND INTERNATIONAL COOPERATION

WHY IS THIS IMPORTANT?

Cooperation between domestic authorities that hold information on beneficial ownership or information that could be helpful in identifying the beneficial owner is essential. Governments should thus ensure that there is a good understanding regarding which parties/bodies hold and have an obligation to maintain basic and beneficial ownership information. This will also help to avoid duplication of work and resources.

Criminals often choose to conceal their identities behind a chain of different companies incorporated in different jurisdictions, thus making it harder for law enforcement authorities to locate and obtain information on the ownership and control structure. Accessing foreign data on beneficial ownership is one of the main challenges reported by legal authorities surveyed in the EU.⁵⁷ Against this backdrop it is important that countries facilitate access to beneficial ownership information by foreign authorities in a timely and effective manner.

WHAT SHOULD BE IN PLACE?

Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner – for instance, through access to central beneficial ownership registries.

High scoring countries have no restrictions in place related to sharing information between domestic bodies, and accessing that information is efficient. A central database therefore scores more points than several databases. Lower scores are given to countries in which domestic authorities can only access beneficial ownership information through written requests or memoranda of understanding – or worse, through court orders.

In relation to international cooperation, high scoring countries have clear procedural requirements to guide foreign jurisdictions making requests. High scoring countries have laws in place that allow competent authorities to use their investigatory powers to respond to international requests. Low scoring countries have significant legal restrictions in place that prevent good cooperation and sharing of information.

Moreover, Transparency International believes that ensuring information on beneficial ownership is accessible would help cross-border investigations, allowing foreign law enforcement authorities to access relevant information discreetly and at short notice. Public registries containing beneficial ownership information would also reduce the need to make lengthy mutual legal assistance requests, which is especially helpful for countries with limited resources.⁵⁸

Transcrime, 2013
Transparency International, May 2014.

FINDINGS

Score: 58 %

Nigerian law does not impose any restriction on information sharing (e.g. confidential information) across in-country authorities. The Economic and Financial Crimes Commission determines the flow of transactions and identity of beneficiaries in consultation with the Central Bank of Nigeria and the Corporate Affairs Commission.⁵⁹

Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding. Beneficial ownership related information are maintained by legal entities subject to AML/CFT requirements and may be shared where their disclosure obligations under the relevant legislations are triggered. The authorities can also make requests to these entities or institutions or to other authorities for information on beneficial ownership.

There are no clear procedural requirements defined and published for beneficial ownership information request from foreign jurisdictions. Foreign authorities have no access to beneficial ownership information maintained by Nigerian authorities.

Competent authorities of Nigeria can use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities. There are no restrictions on the provision or exchange of information or assistance with foreign authorities.

Nigeria is a party to United Nations Convention Against Corruption (UNCAC) and has signed on to Mutual Legal Assistance Treaties with various countries and has on several occasions, cooperated with foreign authorities on criminal investigations. Domestic authorities can use their powers to conduct investigations on account of requests received from foreign authorities.

RECOMMENDATIONS

- Regulate access of foreign authorities, financial institutions and DNFBPs to beneficial ownership information maintained by Nigerian authorities.
- Prepare and publish a guidance for foreign authorities, financial institutions and DNFBPs on how to access beneficial ownership information in Nigeria.
- Improve the access of domestic authorities to beneficial ownership information by setting up a centralised database, such as a central beneficial ownership registry.

Section 14 of MLA 2011 (Amended)

9. BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

WHY IS THIS IMPORTANT?

Current estimates of undeclared offshore wealth range from conservative estimates of US\$7 trillion⁶⁰ (which still amounts to 8% of the world's personal financial wealth) to US\$21–32 trillion.⁶¹ Similar methods and vehicles are used by individuals wishing to evade or avoid paying tax as are used by those siphoning off corrupt funds out of a country. It is important that tax authorities also have access to beneficial ownership information to prevent tax evasion and recover funds, and that they face no restrictions on sharing information internationally in light of the cross-border nature of the theft taking place.

WHAT SHOULD BE IN PLACE?

High scoring countries permit tax authorities to access beneficial ownership information maintained by domestic authorities online and for free, for example through a registry. Countries receive fewer points if they can only access the information upon submission of a specific motivated request. Countries in which the law imposes significant restrictions on sharing beneficial ownership information with domestic tax authorities score worst.

With regard to the sharing of tax information internationally, points are awarded where there are mechanisms in place, such as memoranda of understanding or treaties, to facilitate the exchange of information between tax authorities and foreign counterparts.

FINDINGS

Score: 67%

There is no publicly accessible beneficial ownership registry maintained by domestic authorities, which serve as an obstacle for tax authorities that may need beneficial ownership information. There is no legal restriction on sharing beneficial ownership information with domestic tax authorities.

Nigeria is party to the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of Country-by-Country reports in 2016.

RECOMMENDATIONS

- Improve the access of tax authorities to beneficial ownership information by setting up a centralised database, such as a central beneficial ownership registry.

⁶⁰“The True Cost of Hidden Money, a Piketty Protégé’s Theory on Tax Havens”, New York Times, 15 June 2014, www.nytimes.com/2014/06/16/opinion/a-piketty-protoges-theory-on-tax-havens.html.
⁶¹Tax Justice Network, The Price of Offshore Revisited, July 2012, www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf.

10. BEARER SHARES AND NOMINEES

WHY IS THIS IMPORTANT?

Bearer shares are “company shares that exist in a certificate form ... whoever is in physical possession of the bearer shares is deemed to be the owner”.⁶² As the transfer of shares requires only the delivery of the certificate from one person to another, they allow for anonymous transfers of control and pose serious challenges for money laundering investigations.

Nominees act as the legal manager, owner or shareholder of limited companies or assets. They act on behalf of the real manager, owner or shareholder of these entities and often are the only names indicated in paperwork. These nominees obscure the reality of the company's ownership and control structure, and are often used when the beneficial owners do not wish to disclose their identity or role in the company.

WHAT SHOULD BE IN PLACE?

Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary. High scoring countries prohibit bearer shares by law. Lower scoring countries permit bearer shares but there is a process in place for them to be converted into registered shares. Limited points are available to countries where bearer share holders should notify the company of their identity, and that information is recorded by the company.

Countries that also prohibit the incorporation of companies using nominees score highly. Where nominees are permitted, countries can gain points if nominees are required by law to disclose the identity of the beneficial owners on whose behalf they are working at the time of registering the company. Additional points can be gained by countries where nominees are licensed and if the law requires that professional nominees keep records of their clients for a certain period of time.

FINDINGS

Score: 69%

In Nigeria, shares in companies are issued in registered form and not bearer form. The concept of bearer shares does not exist under Nigerian company law.

Although, there is no express provision permitting the use of nominee shareholders and directors, Section 245 of CAMA recognizes the concept of “shadow director” as a person while not being on the board of directors of the company, is one on whose instructions and directions the directors are accustomed to act. CAMA and the SEC Rules⁶³ regulate disclosure of nominee shareholders only, but do not bring any transparency into the relationship of the director and shadow director. Moreover, these rules apply to public companies only.

World Bank/UNODC Stolen Asset Recovery Initiative, 2011.
Section 95 (1) and (2) of CAMA; Rule 1 and 61 of the SEC Rules

Professional nominees do not have to be licensed as they need to keep records of their clients for a certain period of time when brokers/custodians/agents provide nominee account services.

RECOMMENDATIONS

- Prohibit the incorporation of companies using nominees.
- Prohibit the use of nominee directors.

ANNEX 1: METHODOLOGY

To monitor the extent to which Nigeria is fulfilling its commitments and the adequacy of its beneficial ownership transparency framework, Transparency International conducted an assessment of the current level of compliance with each of the 10 beneficial ownership principles. These principles were adopted by the G20. Transparency International conducted several surveys using these principles to assess both G20 and non-G20 countries. The assessment sheds light on how strong the current beneficial ownership transparency system is within Nigeria, and which parts of the system should be strengthened.

The 10 beneficial ownership principles build on the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations.⁶⁵ Transparency International's *The Technical Guide: Implementing the G20 Beneficial Ownership Principles*⁶⁶ provides the basis of the questionnaire applied in this research and describes the current applicable international standards.

DATA COLLECTION AND VERIFICATION

All data for the questionnaire was collected by desk research conducted between May and August 2017 by Transparency International national chapters, consultants or pro bono lawyers. The sources consulted included relevant domestic laws, rules and regulations, as well as available reports and assessments produced by international and non-governmental organisations. Data for each question was recorded and the exact sources documented. The research was based on the latest available documentation. Where recent legislation has been adopted but not yet implemented, the researcher answered the questions by considering the legal framework in force.

All collected data was peer-reviewed by in-country experts and pro bono lawyers. The data was also verified and checked for consistency by researcher of the Transparency International secretariat.

During research draft, questionnaires were shared with government officials for comments. Officials were given the opportunity to review the data and to provide feedback or propose corrections. Officials present at the validation fully agreed with the findings of the research and made minor semantics corrections which were effected at the end of the validation exercise. A few additions were made in the area of recommendations such as avoiding issues of double standard processes between local and international companies bidding for contracts in Nigeria; gathering information and fine-tuning requirement for Inter-agency collaboration by way of synchronizing database, and verification and categorization of companies bidding for government contracts in Nigeria.

Available at https://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles

QUESTIONNAIRE STRUCTURE AND SCORING

Questions were designed in order to capture and measure the necessary components that should be in place for Nigeria to be implementing each of the 10 principles to best effect. The number of questions per principle, and thus the total number of points available per principle, varies depending on the complexity and number of issues covered in the original principle. Within this framework, the total number of possible points under each principle also varies.

We used a four-point scoring scale. The model answers pertaining to each are specific to each question, but the principles underlying each score are, generally, as follows:

4	The country's legal framework is fully in line with the principle.
3	The country's legal framework is generally in line with the principle, but with shortcomings.
2	There are some areas in which the country is in line with the principle, but significant shortcomings remain.
1	The country's legal framework is not in line with the principle, apart from some minor areas.
0	The country's legal framework is not at all in line with the principle.

LIMITATIONS

It is important to note that this research focuses specifically on assessing the legal framework related to beneficial ownership transparency and it is beyond its scope to analyse how laws and regulations are implemented and enforced in practice. However, such research would be an important follow-up to this assessment.

Transparency International has not undertaken to verify whether the information disclosed on government websites or in reports is complete or accurate. Moreover, this assessment focuses on what we consider to be the key issues necessary to implement the 10 principles and to ensure an adequate beneficial ownership transparency framework. There may be other issues that are also relevant but not covered by this assessment.

Finally, we have not weighted the principles. We are aware that some principles are more complex than others; however, we do not take a position within this report on whether some are more important than others. Therefore, the overall scoring is a general analysis of how countries are performing across all the principles

ANNEX 2 - QUESTIONNAIRE AND SCORING CRITERIA

Set out below are the questions that were asked, guidance on what we were looking to be in place and the number of points awarded for each type of response.

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Guidance: The beneficial owner should always be a natural (physical) person and never another legal entity. The beneficial owner(s) is the person who ultimately exercises control through legal ownership or through other means.

Q1. To what extent does the law in your country clearly define beneficial ownership?

Scoring criteria:

4: Beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means, in addition to legal ownership.

1: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.

0: There is no definition of beneficial ownership or the control element is not included.

PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Guidance: Countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies.

Q2. Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?

4: Yes

0: No

Q3. Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), non-governmental organisations) consulted during the assessment?

4: Yes, external stakeholders were consulted.

0: No, external stakeholders were not consulted or the risk assessment has not been conducted.

Q4. Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?

4: Yes, financial institutions and DNFBPs received information regarding high-risk areas and other findings of the assessment.

0: No, the results have not been communicated.

Q5. Has the final risk assessment been published?

4: Yes, the final risk assessment is available to the public.

2: Only an executive summary of the risk assessment has been published.

0: No, the risk assessment has not been published or conducted.

Q6. Did the risk assessment identify specific sectors/areas as high-risk, requiring enhanced due diligence?

4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.

0: No, the risk assessment does not identify high-risk sectors / areas.

PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Guidance: Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.

Q7. Are legal entities required to maintain beneficial ownership information?

4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership of control of the legal entity.

3: Yes, legal entities are required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.

0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.

Q8. Does the law require that information on beneficial ownership has to be maintained within the country of incorporation of the legal entity?

4: Yes, the law establishes that the information needs to be maintained within the country of incorporation regardless whether the legal entity has or not physical presence in the country.

0: There is no requirement to hold beneficial ownership information in the country of incorporation or there is no requirement to hold beneficial ownership information at all.

Q9. Does the law require shareholders to declare to the company if they own shares on behalf of a third person?

- 4: Yes, shareholders need to declare if control is exercised by a third person.
2: Only in certain cases do shareholders need to declare if control is exercised by a third person.
0: No, there is no such requirement.

Q10. Does the law require beneficial owners/shareholders to inform the company regarding changes in share ownership?

- 4: Yes, there is a requirement for beneficial owners/shareholders to inform the company regarding changes in share ownership.
0: No, there is no requirement for beneficial owners or shareholder to inform the company regarding changes in share ownership.

PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Guidance: All relevant competent authorities, including all bodies responsible for anti-money laundering, control of corruption and tax evasion/avoidance, should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Countries should establish a central (unified) beneficial ownership registry that is freely accessible to the public. At a minimum, beneficial ownership registries should be open to competent authorities, financial institutions and DNFBPs.

Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

Q11. Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) are allowed to have access to beneficial ownership information?

- 4: Yes, the law specifies that all law enforcement bodies, tax agencies and the financial intelligence unit should have access to beneficial ownership information
2: Only some competent authorities are explicitly mentioned in the law.
1: The law does not specify which authorities should have access to beneficial ownership information.

Q12. Which information sources are competent authorities allowed to access for beneficial ownership information?

- 4: Information is available through a central beneficial ownership registry/company registry.
3: information is available through decentralised beneficial ownership registries/ company registries.
1: Authorities have access to information maintained by legal entities / or information recorded by tax agencies/ or information obtained by financial institutions and DNFBPs.
0: Information on beneficial ownership is not available.

Q13. Does the law specify a timeframe (e.g. 24 hours) within which competent authorities can gain access to beneficial ownership?

4: Yes, immediately/24 hours.

3: 15 days.

2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

Q14. What information on beneficial ownership is recorded in the central company registry?

In countries where there are sub-national registries, please respond to the question using the state/province registry that contains the largest number of incorporated companies.

4: All relevant information is recorded: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially recorded.

1: Only the name of the beneficial owner is recorded.

0: No information is recorded.

Q15. What information on beneficial ownership is made available to the public?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially published online, but some data is omitted (e.g. tax number).

1: Only the name of the beneficial owner is published/ or information is only made available on paper/physically.

0: No information is published.

Q16. Does the law mandate the registry authority to verify the beneficial ownership information or other relevant information such as shareholders/directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others)?

4: Yes, the registry authority is obliged to conduct independent verification of the information provided by legal entities regarding ownership of control.

2: Only in suspicious cases.

0: No, the information is registered as declared by the legal entity.

Q17. Does the law require legal entities to update information on beneficial ownership, shareholders and directors provided in the company registry?

4: Yes, legal entities are required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/shareholders) immediately or within 24 hours after the change.

3: Yes, legal entities are required to update the information on beneficial ownership or directors/shareholders within 30 days after the change.

2: Yes, legal entities are required to update the information on the beneficial owner or directors/shareholders on an annual basis.

1: Yes, but the law does not specify a specific timeframe.

0: No, the law does not require legal entities to update the information on control and ownership.

PRINCIPLE 5: TRUSTS

Guidance: Trustees should be required to collect information on the beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationship with financial institutions and DNFBPs. Countries should create registries to capture information about trusts, such as trust registries or asset registries, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

Q18. Does the law require trustees to hold beneficial information about the parties to the trust, including information on settlors, the protector, trustees and beneficiaries?

4: Yes, the law requires trustees to maintain all relevant information about the parties to the trust, including on settlors, the protector, trustees and beneficiaries.

2: Yes, but the law does not require that the information maintained should cover all parties to the trust (e.g. settlors are not covered).

1: Yes, but only professional trusts are covered by the law.

0: Trustees are not required by law to maintain information on the parties to the trust.

Q19. In the case of foreign trusts, are trustees required to proactively disclose to financial institutions/DNFBPs or others information about the parties to the trust?

4: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries.

0: Trustees are not required by disclose information on the parties to the trust.

PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Guidance: Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs.

Q20. Is there a registry which collects information on trusts?

4: Yes, information on trusts is maintained in a registry.

2: Yes, there is a registry which collects information on trusts but registration is not mandatory or information registered is not sufficiently complete to make it possible to identify the real beneficial owner.

0: No, there is no registry.

Q21. Does the law allow competent authorities to request/access information on trusts held by trustees, financial institutions, or DNFBPs?

4: Yes, competent authorities are able to access beneficial ownership information held by trustees and financial institutions, or access information collected in the registry.

2: Competent authorities have to request information or only have access to information collected by financial institutions.

Q22. Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) should have timely access to beneficial ownership information held by trustees?

4: Yes.

2: Some authorities.

0: No.

PRINCIPLE 7: DUTIES OF BUSINESSES AND PROFESSIONS

Guidance: Financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as trust or company service providers (TCSPs) when they provide services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks. In high-risk cases, financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer is a politically exposed person (PEP) or a close associate of a PEP. The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management. Finally, they should have access to beneficial ownership information collected by the government.

Q23. Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?

4: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.

2: Financial institutions are required to identify the beneficial owners only in cases considered as high-risk or the requirement does not cover the identification of the beneficial owners of both natural and legal customers.

0: No, there is no requirement to identify the beneficial owners.

Q24. Does the law require financial institutions to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Q25. In what cases does the law require financial institutions to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Q26. Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP or a family member or close associate of a PEP?

4: Yes, financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and associates.

Q27. Does the law allow financial institutions to proceed with a business transaction if the beneficial owner has not been identified?

4: No, financial institutions are not allowed to proceed with transaction if the beneficial owner has not been identified.

0: Yes, financial institutions may proceed with business transactions regardless of whether or not the beneficial owner has been identified.

Q28. Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?

4: Yes.

2: Only if there is enough evidence of wrongdoing.

0: No

Q29. Do financial institutions have access to beneficial ownership information collected by the government?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Online, upon registration.
- 2: Online, upon registration and payment of fee.
- 1: Upon request or in person.
- 0: There is no access to beneficial ownership information collected by the government.

Q30. Does the law allow the application of sanctions to financial institutions' directors and senior management?

- 4: Yes, the law envisages sanctions for both legal entities and senior management.
- 0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

DNFBPS

Q31. Are TCSPs required by law to identify the beneficial owner of the customers?

- 4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 2: TCSPs are partially covered by the law.
- 0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.

Q32. Are lawyers, when carrying out certain transactions on behalf of clients (e.g. management of assets), required by law to identify the beneficial owner of the customers?

- 4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.

Q33. Are accountants required by law to identify the beneficial owner of the customers?

- 4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, accountants are not covered by the law and do not have anti-money laundering obligations.

Q34. Are real estate agents required by law to identify the beneficial owner of the customers?

- 4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.
- 2: Real estate agents are partially covered by the law.
- 0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.

Q35. Are casinos required by law to identify the beneficial owners of the customers?

- 4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.
- 0: No, casinos are not covered by the law and do not have anti-money laundering obligations.

Q36. Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?

4: Yes, dealers in precious metals and stones are required to identify the beneficial owner of clients in all transactions or in transactions above a certain threshold.

0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.

Q37. Are dealers in luxury goods required by law to identify the beneficial owner of the customers?

4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.

0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.

Q38. Does the law require relevant DNFBPs to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Q39. Does the law require DNFBPs to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Q40. Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?

4: Yes, DNFBPs are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and their associates.

Q41. Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?

4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.

Q42. Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?

4: Yes, the law establishes that relevant DNFBPs have to submit a suspicious transaction report if they cannot identify the beneficial owner of their clients.

2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.

0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

Q43. Does the law allow the application of sanctions to DNFBPs' directors and senior management?

4: Yes, the law envisages sanctions for both legal entities and senior management.

0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Guidance: Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registries. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.

Governments should publish guidelines explaining what type of information is available and how it can be accessed.

Q44. Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?

4: No, there are no restrictions in place.

2: There are some restrictions on sharing information across in-country authorities.

0: Yes, there are significant restrictions on sharing information across in-country authorities.

Q45. How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?

4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership registry.

3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company registry, tax registry, etc.) that can be accessed.

2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.

1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.

0: Information on beneficial ownership is not shared.

Q47. Does the law allow competent authorities in your country to use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities?

4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.

0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.

Q48. Does the law in your country restrict the provision or exchange of information or assistance with foreign authorities (e.g. it is impossible to share information related to fiscal matters; restrictions related to bank secrecy; restrictions related to the nature or status of the requesting counterpart, among others)?

4: No, the law does not impose any restriction.

2: There are some restrictions that hamper the timely exchange of information.

0: Yes, there are significant restrictions in the law.

Q49. Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBPs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

Q50. Do tax authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

Q51. Does the law impose any restriction on sharing beneficial ownership information with domestic tax authorities (e.g. confidential information)?

4: No, the law does not impose restrictions.

2: The law does not impose significant restrictions, but exchange of information is still limited or cumbersome (e.g. a court order is necessary)

0: Yes, there are significant restrictions in place.

Q52. Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts?

4: Yes. The country is a member of the OECD tax information exchange and has signed tax information exchange agreements with several countries.

2: There is a mechanism available, but improvements are needed.

0: No.

PRINCIPLE 10: BEARER SHARES AND NOMINEES

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary.

Nominee shareholders and directors should be required to disclose to company or beneficial ownership registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

Q53. Does the law allow the use of bearer shares in your country?

4: No, bearer shares are prohibited by law.

0: Yes, bearer shares are allowed by law.

Q54. If the use of bearer shares is allowed, is there any other measure in place to prevent them being misused?

2: Yes, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation).

1: Bearer share holders have to notify the company and the company is obliged to record their identity or there are other preventive measures in place.

0: No, there are no measures in place.

Q55. Does the law allow the incorporation of companies using nominee shareholders and directors?

4: No, nominee shareholders and directors are not allowed.

0: Yes, nominee shareholders and directors are allowed.

Q56. Does the law require nominee shareholders and directors to disclose, upon registering the company, the identity of the beneficial owner?

2: Yes, nominees need to disclose the identity of the beneficial owner.

0: No, nominees do not need to disclose the identity of the beneficial owner or nominees are not allowed.

Q57. Does the law require professional nominees to be licensed?

0.5: Yes, professional nominees need to be licensed.

0: No, professional nominees do not need to be licensed.

Q58. Does the law require professional nominees to keep records of the person who nominated them?

0.5: Yes, professional nominees need to keep records of their clients for a certain period of time.

0: No, professional nominees do not need to keep records.



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