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THE ROLE OF FINANCIAL INSTITUTIONS IN CURBING ILLEGAL WILDLIFE TRADE IN NIGERIA

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# THE ROLE OF FINANCIAL INSTITUTIONS IN CURBING ILLEGAL WILDLIFE TRADE IN NIGERIA

Illegal wildlife trade is a transnational crime which involves the sourcing, movement, buying, and selling of wildlife, in contravention of national and international laws. It is an organized crime spanning continents, generating billions of dollars in criminal proceeds annually. Wildlife in this context represents protected and endangered species of plants and animals both aquatic and terrestrial.

It must however be noted from the very start that not all trades in wildlife are illegal. In fact, most are legal, regulated, semi-regulated or unregulated and play important roles in the ecosystem and way of life of communities, local, regional, and global economies.

Illegal wildlife traders deal in wildlife which are protected by legislation usually because of their status as endangered species or the adverse effect the indiscriminate sourcing and sale of such wildlife would have on public health and the environment.

The trade of wildlife, whether legal or illegal, particularly in the case of animals, leads to unnecessary suffering from a welfare perspective. Although some argue that the economic role of legal wildlife trade may partially justify this suffering, illegal wildlife traders subject animals to undue pain while engaging in criminal activities for their own unlawful profit.

In Nigeria, legislation, in the form of the Endangered Species Act of 2016,has been put in place to regulate trading in wildlife; with species catalogued and listed on three different schedules to wit:

· species in relation to which international trade is prohibited except in exceptional circumstances;

· species in relation to which international trade may be conducted only under license.

·species in relation to which international trade requires the prior issuance of a certificate of origin.

The purposes of this regulation include but are not limited to the following:

· to save endangered species from going into extinction;

· to prevent from going into extinction species that are not currently under threat of extinction but may be if trade in them is left unchecked;

· to protect the environment; and to safeguard public health.

Certain animal and plant species native to Nigeria, such as Pangolins and Gum Arabic tree arecategorized as endangered while some species of vultures are deemed to face the threat of extinction. Strict enforcement of the law, local, multilateral or international will aid in the preservation of

our biodiversity.

Indiscriminate deforestation and loggingusually result in increased runoff of surface water during the rainy season, consequently elevating the risk of flooding. This flooding in turn results in the loss of farmlands, entire harvests and lives. It also increases the risk of erosion, not to mention the spread of various diseases especially, water-borne diseases. Since illegal wildlife traders evade veterinary checks and inspections related to sanitary safety standards and regulations, in their bid to move wildlife between jurisdictions, there is an increased risk of zoonotic diseases (i.e., diseases borne by animals)which if not properly managed may result in pandemics such as the well-known case of Ebola.

The activities of illegal wildlife traffickers in jurisdictions are determined by the status of such a country in the supply chain as a source, transit or destination country. These traffickers usually poach wildlife in countries rich in such species and where law enforcement oversight is weak or nonexistent;then traffic them through countries with porous borders and weak laws(the transit countries) to countries where such wildlife is in high demand (the destination countries).

From the foregoing, it is evident that Nigeria plays a dual role in the illegal wildlife trafficking supply chain. A 2021 report from the United Nations Office on Drugs and Crime, titled "Addressing Corruption in the Illegal Wildlife Trade in Nigeria," reveals a geographical concentration of trafficking routes spanning various markets. Nigeria has emerged as a significant source and transit point for the transportation of protected species and their products, including items like ivory and pangolin scales.

Pangolins are likely the most trafficked mammals in the world because their scales and claws are used for traditional medicine and folk remedies in some Asian countries with China and Vietnam ranking as the highest consumers of the product in the world. Out of the seven living species of pangolins, four are native to Africa. Three out of these four can be found in Nigeria, predominantly in the South Western part of the country. Pangolins are traded locally for their meat as well. Nigeria is also considered one of the prominent ivory exporting countries in West Africa, functioning as a major hub that draws the product from Central Africa and East Africa.

In a 2018 progress report on the National Ivory Plan by the Federal Ministry of Environment, emphasis was laid on the training and equipping of rangers with camouflage uniforms, patrol vehicles, cameras and other surveillance tools, to aid in combating poaching. While this is a good development, tracking the funds generated by this illegal trade in addition to this, would yield better results.

Estimating the annual proceeds generated from illegal wildlife trade is a complex task due to several factors. Only a portion of the overall trade is documented through seizures, and there has been a recent move towards a consistent reporting standard across different jurisdictions concerning the quantity and weight of confiscated items. According to a report by the Financial Action Task Force (FATF) on Money Laundering and the Illegal Wildlife Trade in June 2020, it was approximated that the revenue generated from this trade ranges from USD 7 billion to USD 23 billion each year. Unfortunately, there seems to be a lack of emphasis on addressing the financial aspect of the illegal wildlife trade, despite the fact that these funds are ultimately funneled through financial institutions.

Since Nigeria is a source as well as a transit country of illegal wildlife trade, the financial aspect of the crime will expectedly be complex and difficult to track. This is because traffickers are known to use the informal Hawala system to move value across jurisdictions,and pay poachers, farmersand other locals who source the plants and animals using cash. The trade is

also fueled by porous borders as well as the twin evil ofbribery and corruption.

The first step towards combating this crime is through awareness campaigns and staff training. Having gone through the schedule of animals the trading of which is prohibited and those that need permits before they can be traded in, one comes to the realization that so many of these species are sold in open markets with the sellers totally oblivious that they are committing crimes. Illegal wildlife traffickers capitalize on this lack of knowledge to exploit the local traders who sell the products to them at far cheaper prices than what are obtainable in the international market.

Financial institutions should train their staff on the need to conduct Customer Due Diligence (CDD) during customer onboarding. Staff are to interview intending customers extensively with a view to finding out their line of business. Customers who claim to trade in livestock and its products such as hides and skin, should be made to state the specific livestock they trade in to ensure that they are not engaged in illegal wildlife trade.

Some seizures of illegal wildlife and their products at the ports have been linked to foreign nationals. Due diligence during onboarding of foreign nationals especially from countries that are known destinations of illegal wildlife should be incorporated in the customer onboarding process since some of these countries are currently not on any sanction list.

Illegal wildlife traffickers often employ fronts and shell companies to hide the proceeds of their crimes, facilitate transactions among themselves, acquire properties, gain access to import and export opportunities, and mask their money laundering activities. It's important to note that individuals with legitimate businesses may also be involved in illegal wildlife trade. Furthermore, funds from both legal and illegal enterprises might be mingled as a means of money laundering. Financial institutions must diligently conduct background checks before accepting corporate entities with complex ownership structures aimed at concealing the identities of beneficial owners or those with directors or shareholders from countries associated with wildlife trafficking, including source, destination, and transit nations.

It is recommended that once a customer is onboarded, transaction monitoring should commence immediately. Many corporate organizations have different forms of financial crime and anti-money laundering applications designed to sift through all customers' transactions and flag transactions which appear to be suspicious. These applications should be designed in such a way as to flag key words such as zoo, reserve, scales, tusks and even the names of all the animals and plants on the schedules mentioned earlier. They should also be enabled to track large cash transactions consummated at border towns and towns which are hosts to game reserves.

It is further recommended that accounts of customers who work in game reserves, law enforcements, border patrol, immigration, port personnel,custom officers, shipping companies, and airlinesshould also be monitored for traces of inducements, bribes, or proceeds from illegal wildlife trade. This is because major players in the wildlife trafficking business do not source the wildlife themselves but rather rely on farmers, hunters, and other locals as well as people in authority and the transportation industryto facilitate their trade.

Moreover, since Nigeria is also a transit country for illicit wildlife trade, cross border payments will be made by traffickers who are unable to move their funds across borders through the informal system, using banks and other financial institutions. Transfers to and from countries that are rich in wildlife, source countries and other known transit and destination countries should be flagged, and due diligence conducted before such transfers are affected.

In addition, specificbusinesses and professions, such as logistics companies, traders in art, high end boutiques, dealers in jewelry, native doctors and herbalists, foreigners, especially nationals of known source, destination and transit countries should be categorized as high risk and a commensurate monitoring of their business activities done by financial institutions.

Illegal wildlife trade also takes place online with traders and buyers using VPN connections to conceal their locations. Financial institutions should also be on the look out for transactions between individuals or corporate entities who on the surface have nothing in common.

Furthermore, financial institutions should regularly fileSuspicious Transaction Reports (STRs)to the Financial Intelligence Units and collaborate with agencies of government working to curb the increasing trade in wildlife. This could come inform of developing a register for people who have been convicted for wildlife crime and companies implicated irrespective of their nationalities or countries of incorporation.

Financial institutions should also expand their negative news searches to include wildlife crime. This is to ensure that players in the market who have been identified do not continue to use their institutions to facilitate their crime, if a banking relationship has already been established.

In conclusion, combating the illegal wildlife trade should be a collective responsibility. Those involved in these activities are not only criminals who disrupt our financial systems but are frequently linked to other illicit activities like drug trade, illegal mining, bribery, and corruption. Additionally, their pursuit of profit through illegal means heightens the risk of zoonotic diseases, potentially resulting in widespread pandemics that endanger millions of lives.

Financial institutions should rise to the challenge of following the money, to complement the efforts of government institutions to reverse the rising illegal wildlife crimes committed within our borders which has led the US state department to elevate the status of Nigeria from a focus country to a country of concern regarding illegal wildlife trade.

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# THE IMPACT OF THE CDD REGULATIONS (2023)

## INTRODUCTION

The CBN (Customer Due Diligence) Regulations 2023 (also known as the "CDD Regulations") were released by the Central Bank of Nigeria (CBN) on June 20, 2023.

The CDD Regulations 2023 is aimed at providing additional customer due diligence measures for financial institutions and enabling CBN to enforce compliance with customer due diligence measures in the AML/CFT/CPF regulations, 2022.

The CDD Regulations aim to strengthen Nigeria's customer due diligence (CDD) framework in the battle against financial crimes such as money laundering and terrorism funding. This step is considered one of the strategies taken to rectify the shortcomings in our anti-money laundering (AML) policies. It's worth noting that on February 24, 2023, the Financial Action Task Force (FATF) 'grey-listed' South Africa and Nigeria, along with 21 other jurisdictions.

The CDD Regulations will have a significant impact on the compliance landscape in Nigeria. Financial institutions will need to take steps to ensure that they follow the new requirements, which will require additional resources and investment.

### Impact on Risk-Based Approach to Customer Due Diligence

- The new CDD regulations require financial institutions to take a risk-based approach to customer due diligence, which means that the level of due diligence that is required will vary depending on the risk posed by the customer.
- Financial institutions will need to assess the risk of each customer on an individual basis. This assessment should consider factors such as the customer's business activities, the source of their funds, and their geographic location.
- The higher the risk posed by the customer, the more extensive the due diligence that will be required. For example, financial institutions may need to collect additional information about the customer, such as their source of funds and their beneficial ownership.

### Impact on Beneficial Ownership Requirements

- The new CDD regulations also impose new requirements on financial institutions to identify and verify the beneficial owners of their customers. The beneficial owner is the natural person or persons who ultimately own or control a customer.
- Identifying and verifying the beneficial owners of customers can be a complex and time-consuming process. Financial institutions will need to develop

procedures to identify and verify the beneficial owners of their customers.

- These procedures should be tailored to the specific risk posed by the customer. For example, financial institutions may need to collect additional information about the customer's ownership structure, such as corporate records and shareholder lists.

## Impact on Customer Relationship Monitoring

- The new CDD regulations also require financial institutions to monitor customer relationships for suspicious activity. This monitoring should be ongoing and tailored to the risk posed by the customer.
- Financial institutions should develop procedures to identify and report suspicious activity. These procedures should include a process for reviewing customer transactions and identifying any unusual or suspicious activity.

## Impact on Suspicious Activity Reporting

- The new CDD regulations require financial institutions to report suspicious activity to the appropriate authorities. The authorities that should be notified will vary depending on the jurisdiction.
- Financial institutions should develop procedures for reporting suspicious activity. These procedures should ensure that suspicious activity is reported promptly and accurately.

Some of the specific challenges that financial institutions will face in complying with the CDD Regulations include:

- Implementing a Risk-Based Approach to Customer Due Diligence.
- Identifying and verifying the beneficial owners of customers, which can be a complex and time-consuming process.
- Assessing the risk of customers, which will require financial institutions to have a good understanding of the customer's business activities and financial transactions.
- Monitoring customer relationships on an ongoing basis to identify and report suspicious transactions.

There are a few compliance solutions that financial institutions can implement to help them comply with the CDD Regulations. These solutions include:

- Using customer due diligence software to automate the CDD process.
- Hiring experienced compliance professionals to help develop and implement CDD procedures.
- Conducting training for staff on CDD requirements
- Establishing a robust risk management framework.

## Conclusion

The CDD Regulations represent a significant step forward in the fight against money laundering and terrorist financing in Nigeria. Financial institutions that can successfully implement the new requirements will be well-positioned to mitigate their risk of exposure to these crimes.

In addition to the specific challenges mentioned above, the CDD Regulations will also have several other impacts on the compliance landscape in Nigeria. For example, the regulations will increase the importance of risk-based approaches to compliance. Financial institutions will haveto carefully assess the risk of each customer and tailor their CDD procedures accordingly.

The CDD Regulations will also placegreater emphasis on customer due diligence training. Financial institutions will need to ensure that their staff is properly trained on the new requirements and is able to identify and report suspicious transactions.

Overall, the CDD Regulations represent a significant challenge for financial institutions in Nigeria. However, by taking the necessary steps to comply with the regulations, financial institutions can help protect the Nigerian financial system from money laundering and terrorist financing.


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# THE NATURE OF COMPLIANCE AND THE IMPORTANCE OF COMPLIANCE CULTURE IN THE BANKING BUSINESS

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## THE NATURE OF COMPLIANCE

*Humans, by their inherent nature, tend to deviate from established norms and often require regulations to maintain conformity. This tendency is exemplified by the story of two elderly individuals who were entrusted with the responsibility of caring for a garden. They were provided comfortable lodging and were given access to free meals, along with clear instructions regarding boundaries they should not exceed. The consequences of following these rules and the penalties for non-compliance were explicitly communicated to them.*

**The rule was:** Obey and live; disobey and die.
They disobeyed, and the rest becomes story.
Compliance does not exist ina vacuum,it depends on the environment within which the function thrives. Businesses are set up within a regulatory environment, and because it is in the gene of an average man to break rules, then officers must be designated to ensure compliance.

*The Compliance function plays a vital role in ensuring the survival of a financial services business, especially in the banking sector. Regulations govern every aspect of this industry, including its people, procedures, technology, offerings, and services. To achieve the long-term success of the business, adhering to these regulations is of paramount importance.*

When faced with rules, there are essentially two options: to follow them (comply) or to disregard them (not comply). While organizations have the freedom to make this choice, they are not exempt from the consequences of their decision. In fact, compliance is one of the most challenging tasks on Earth. However, for a bank to thrive, it must ensure that its staff's behavior, the services it provides, its terms and conditions, and its product offerings all adhere to the relevant regulations. This is why compliance is an absolute requirement in the banking industry. If we intend to be part of this business, we must adhere to these rules without exception.

## THE COMPLIANCE CULTURE

Culture, generally, is defined as a total way of life of people in a society. In the corporate setting, culture is embedded in the corevalues of every business. It is the premise upon which other organizational goals are built. Culture is identity.
Should compliance be a functional duty or a corporate responsibility?
When the management of a bank projects the responsibility of compliance as that of the compliance department alone, what this does is to create a police and suspect relationship between the business units and the compliance function.

Compliance must not be seen just as a department in a bank, but a culture in the entire bank. Culture is "total", also, compliance culture must permeate the whole bank, from the highest rank to the least, through the front office functions and the back-office functions. If every officer of the bank perceives themselves as a compliance officer and own up to such, having a compliant bank would be an easy goal to achieve.

There is a distinction between "Compliance as a function"and "Compliance as a culture".In this context, the bank designates specific individuals as "Compliance officers" due to the specialized nature of its operations. These officers are responsible for formulating and implementing the compliance program. However, it is essential to understand that, although these officers are the driving force behind compliance, the responsibility for compliance is shared by all individuals within the organization.

The term "strong control/effective policy" is relative. A control/policy is as strong as the strengths of the people enforcing it, and as weak as the weaknesses of the people implementing it.

Management is expected to drive compliance culture by making sure it is in the subconsciousness of every staff, and not an afterthought. It should be celebrated and rewarded accordingly. Every bank officer must be motivated to being compliant.

The risk management framework of banks has three lines of defence as below:

1. **The first line of defence:** This primarily entails the business units.
2. **The second line of defence:** Basically, the control function, operational risk, and compliance function are in this bucket.
3. **The third line of defence:** This is where the audit function (internal and external) falls.

The key denominator here is that all the three linesare agents of defence for the bank's business, just like a football team has the strikers in the front, the mid-fielders, and the back players, and all with uniform interest: To win,or to prevent the team from losing.

Like profit maximization, compliance must be a corporate goal of a bank, as the bank will only live to do businesses in the long run, if it's going concern is not threatened by regulatory infractions and penalties.A properly enforced and implemented compliance culture will help drive out the natural tendency for deviation from standards and align"what we do" with "what we are supposed to do",making compliance not just a functional duty, but also a corporate responsibility.

In cases where business units detach themselves from compliance responsibilities, it reflects a lack of awareness. In reality, the frontline staff are the ones primarily responsible for compliance, while the compliance function plays a monitoring and enforcement role. Essentially, compliance should be an integral part of the bank's core operations, and the success of a compliance program hinges on how well the frontline staff implement it. Therefore, it is crucial for top leadership to strongly emphasize this point, as they have the most significant influence on shaping the compliance culture.

To drive the culture of compliance, the following are important:

1. Compliance KPI to be included in the scorecard of the business units.
2. Continuous bank wide compliance training to bridge knowledge gap.
3. Continuous collaboration between the compliance function and the business unit to reiterate regulatory obligations and consequences for non-compliance.
4. Implementation of consequence management for staff misconduct.
5. Continuous awareness across the bank that compliance is the responsibility of all.

**The compliance officer:** How they see us and who we are.

Just as an average citizen may not like the police, an average business function officer may have similar attitude towards designated compliance officers. The onus is now on compliance professionals to communicate and make manifest, the true identity and position of the compliance function to its various stakeholders for correct perception.

Compliance officers are business enablers, seeing business with one eye for profit and the other eye for regulatory guidance, unlike the old norm where compliance officers set their two eyes on regulations and go blind to business opportunities.

The same way compliance should be a culture for everyone in the bank, compliance officers too should be business drivers and process enablers, providing guidance on how businesses can be done in a compliant manner.

Compliance officers are proactive. They act as consultant to the business functions on how to realise profit for the bank in a sustainable manner.

Compliance officers don't kill business; they are key to the bank's business for both short run and long run success.

The compliance function doesn't obstruct business operations but rather safeguards the bank's business against all regulatory risks.

The business function wants the bank to make targeted profit, the compliance function wants the business to be alive to make such profit now and later. Therefore, both the compliance function and the business units have one goal but achieved through different functions.

In conclusion, compliance is at the core of the banking business. It must be a culture across all functions in the bank, and designated compliance officers must act as business and process enabler, seeing with both profit and regulatory lenses.

**Definition of key terms**

Functional duty: Duties that are expected to be performed only by designated officers.

Corporate responsibility: A responsibility that is taken up by all.

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# DEMYSTIFYING BENEFICIAL OWNERSHIP

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## BACKGROUND

*The financial services industry has witnessed a growing trend in both domestic and international regulations, emphasizing the importance of identifying the Ultimate Beneficial Owners of Trusts, Legal Entities, and Legal Agreements for both Financial and Non-Financial Institutions. In Nigeria specifically, numerous regulations have been enacted that highlight the necessity for Enhanced Due Diligence (EDD) when establishing or maintaining relationships with these High-Risk Customers.*

### These regulations include but not limited to;

i. The Central Bank of Nigeria Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, 2023.
ii. The Central Bank of Nigeria (Customer Due Diligence) Regulations, 2023.
iii. The Central Bank of Nigeria Guidance Notes on Politically Exposed Persons, 2023.
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Given the prevailing trends in the industry and global best practices, this article intends to clarify the concept of Ultimate Beneficial Ownership by highlighting important regulatory aspects. These insights can help in understanding how legal frameworks for Beneficial Ownership information are vital in meeting international standards for combating financial crimes.

## DEFINING ULTIMATE BENEFICIAL OWNERSHIP

An Ultimate Beneficial Owner {also called "Beneficial Owner"}, is the natural person who ultimately owns or controls a Company or Limited Liability Partnership {"LLP"}, or the natural person on whose behalf a transaction is being conducted. This also extends to those natural persons who exercise ultimate effective control over a legal person or legal arrangement. Significant control is the direct or indirect holding of at least 5% of the issued shares, interests or voting rights in a Company or an

LLP. Significant Control also includes the direct or indirect right to remove or appoint majority of the Directors of a Company or Partners of an LLP. It also embraces the direct or indirect exercise of significant influence or control over a Company or LLP.

Under the CBN Guidelines on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, 2023, a Beneficial Owner ("BO") is an individual who owns or has effective control over a customer (that is, the legal entity seeking to initiate a transaction with any financial institution), and/or the individual on whose behalf the transaction is being conducted. In determining who a beneficial owner is, Financial Institutions have recourse to:

a. The incorporation documents.
b. minutes of meetings.
c. Board resolutions.
d. Partnership agreements.
e. annual returns/financial statement.
f. Bye-laws.
g. Information obtained from a Public Register
h. The customer's corporate governance and management structure.

In various financial regulations in different jurisdictions, a beneficial owner is defined as someone who holds a stake of 25% or more in a legal entity or corporation. Additionally, individuals who play a significant role in the management or direction of these entities, or any trusts that own 25% or more of an entity, can also be considered beneficial owners.

It's important to differentiate beneficial ownership from legal ownership. In most cases, the legal owner and the beneficial owner are one and the same. However, there are situations, both legitimate and potentially illegitimate, where the beneficial owner of a property may prefer to remain anonymous. Moreover, there has been a need for clarity regarding whether a beneficial owner is the same as a person with significant control. According to Section 14 of the Persons with Significant Control Regulations in 2022, a person with significant control over a company or LLP is defined in the same way as a beneficial owner.

## IDENTIFYING BENEFICIAL OWNERSHIP

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

I. Identify and verify the natural persons, where they exist, that have ultimate controlling ownership interest in a legal person, taking into cognizance the fact that ownership interests can be so diversified that there may be no natural persons, whether acting alone or with others, exercising control of the legal person or arrangement through ownership.
ii. In the event of doubt as to the persons with the controlling ownership interest as beneficial owners or where no natural person exerts control through ownership interests, identify and verify the natural persons, where they exist, exercising control of the legal person or arrangement through other means.
iii. Where a natural person is not identified, FIs shall identify and take reasonable measures to verify the identity of the relevant natural person who holds senior management position in the legal person.
Where it is a legal arrangement, the FI shall identify and verify the identity of the settlor, trustee, protector (if any), the beneficiaries, and any other natural person exercising control over such legal arrangement.

## DIFFERENTIATING OWNERSHIP THRESHOLDS

Ownership thresholds for a Beneficial owner (BO) is determined by the CBN Guidelines. The regulation clearly states that the natural person(s) must:
i. Ultimately own or hold at least 5% of the issued shares in the legal person either directly or indirectly;
ii. controls a customer and/or the natural person (but not limited to) who:
a. exercises at least 5% of the voting rights in the legal person either directly or indirectly;
b. holds a right directly or indirectly, to appoint or remove majority of the directors or similar positions of the legal person.

The Financial Action Task Force (FATF) has always been a leading authority in setting global standards for financial and non-financial institutions to combat financial crimes such as money laundering, terrorist financing, and proliferation financing. However, when it comes to defining controlling participation in terms of Beneficial Ownership, FATF does not impose a specific threshold. Instead, FATF, in its Guidance 11 and assessment process, has found a 25% threshold to be a reasonable benchmark. Consequently, the term "25 per cent" or "more than 25 per cent" is widely used in various definitions of Beneficial Ownership, including the European Union's Fourth Anti-Money Laundering Directive. It's important to note that FATF offers this threshold as just one example of how to determine Beneficial Ownership.

Globally, lower thresholds are adopted to identify a BO, or the person considered to have a controlling share. For example, Argentina and the Dominican Republic use a threshold of 20 percent; Uruguay uses a threshold of 15 percent; Barbados, the Bahamas, Belize, and Jersey use a threshold of 10 percent; and Nigeria and Colombia, adopt 5 percent. When a corporation or other legal entities open a bank account, the bank must identify the Beneficial Owners of that entity. This is envisioned to prevent money laundering, terrorism financing, proliferation financing of Weapons of Mass Destruction {"WMD"}, tax evasion amongst other financial crimes, and corrupt practices.

For charities and non-profits, the Beneficial Ownership Rule does not apply to those with over 5% of the company. The reason for this not far-fetched as these entities do not characteristically have percentage-based controlling interests. However, they must still disclose the information of any shareholder who has significant control over the company, as well as, their list of donors.

## NOTABLE AREAS OF BENEFICIAL OWNERSHIP

Each type of asset has different rules for how Beneficial Ownership is recorded. Although these rules vary by jurisdiction, these are some of the most common standards4:

### i. Securities

Publicly traded securities are often registered in the name of a broker for safety and convenience. In private companies,

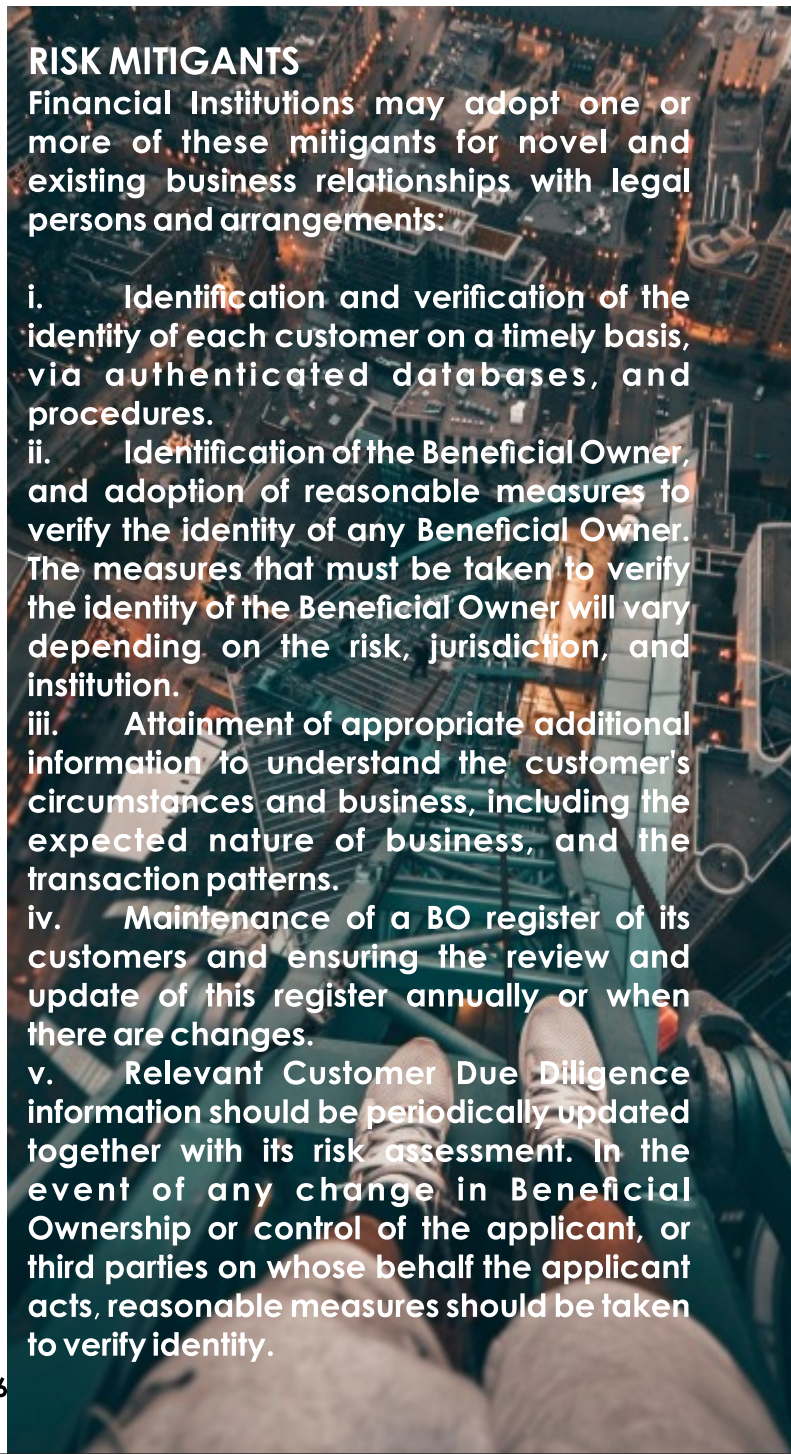
which provides information about the true ownership and control of companies and LLPs in Nigeria. This Register allows anyone to easily determine ownership details within Nigerian companies and LLPs. This transparency serves as a crucial tool in the fight against corruption, illicit financial activities, and other forms of criminality often hidden behind corporate structures. Furthermore, it promotes transparency in business operations in Nigeria.

To comply with the PSC requirements, individuals designated as PSCs must submit information related to their control or any changes in this control to the respective company or LLP in writing. This submission should occur within seven days of becoming a PSC or after any alterations in control details.

Furthermore, the Company or LLP is required to notify the Commission of the information (or any change in the information) received from the PSC not later than one month after receipt of the information. This means that government agencies such as the Bureau of Public Procurement, Federal Inland Revenue Service, National Identity Management Commission, the Nigerian Financial Intelligence Unit amongst others, can now more easily make use of this data. This includes the combination of this data with other datasets such as public procurement, and extractive industry data, and connecting it with Beneficial Ownership data from across the globe.

There is ongoing discussion about whether information in BO registries should be made public. Some sectors are opposed to making the identity of BOs public because they regard it as a violation of privacy and are concerned that it could lead to higher risks, such as kidnapping or extortion. Public registries may also create over-reliance by Financial Institutions and DNFBPs on such information rather than conducting enhanced due diligence to validate the identity of BOs of legal persons and arrangements. The United Kingdom (since 2016) and Denmark (since 2017) require BO information on commercial companies and other legal persons be publicly available in an open, online registry. Ukraine also has a public BO registry.

During an Anti-Corruption Summit hosted in the United Kingdom, Afghanistan, Ghana, Mexico, and Nigeria pledged to establish publicly accessible Beneficial Ownership (BO) registries. Meanwhile, several other nations are contemplating the possibility of doing the same. It's important to highlight that while the Financial Action Task Force (FATF) standards do not mandate public BO registries, certain jurisdictions are moving in that direction. Moreover, international entities like the European Union are actively striving to persuade influential government officials to adopt this as a global norm.



**RISK MITIGANTS**

**Financial Institutions may adopt one or more of these mitigants for novel and existing business relationships with legal persons and arrangements:**

**i. Identification and verification of the identity of each customer on a timely basis, via authenticated databases, and procedures.**

**ii. Identification of the Beneficial Owner, and adoption of reasonable measures to verify the identity of any Beneficial Owner. The measures that must be taken to verify the identity of the Beneficial Owner will vary depending on the risk, jurisdiction, and institution.**

**iii. Attainment of appropriate additional information to understand the customer's circumstances and business, including the expected nature of business, and the transaction patterns.**

**iv. Maintenance of a BO register of its customers and ensuring the review and update of this register annually or when there are changes.**

**v. Relevant Customer Due Diligence information should be periodically updated together with its risk assessment. In the event of any change in Beneficial Ownership or control of the applicant, or third parties on whose behalf the applicant acts, reasonable measures should be taken to verify identity.**

however, for a number of reasons, a Beneficial Owner may not want their name publicised as a shareholder of record. So long as tax laws and other laws are complied with, this practice is not illegal in itself, in several climes.

### ii. Real Estate

Supranationally, Land Registries disclose the names of the owners of properties. In some cases, a beneficial owner may not want their name to appear on public records. In such cases, it is common for trustees or other entities to act as legal owners in place of the Beneficial Owner. For example, famous artists or politicians may not want their home addresses to be easily found in public records, so they do not appear personally on title deeds. Also, wealthy individuals who may want to mitigate the risk of losing their assets to a divorce may opt for trusts to act as legal owners, to prevent their names on title deeds of their assets.

### iii. Asset Protection

Wealthy individuals who are at risk of lawsuits, or simply want to protect their assets and plan their estate, generally use trusts to act as the legal owner of their property, often securities and money, while they and their families continue to be the Beneficial Owners. Here again, this practice is legal in certain jurisdictions, but highly regulated.

## COMPLEX STRUCTURES AND BENEFICIAL OWNERSHIP

Complex structures are commonly created with the help of a Trust and Company Service Provider (TCSP) or Company Service Providers (CSPs). These are firms or sole practitioners (e.g., lawyers or accountants) whose business is to form companies or other legal persons, to act, or arrange for another person to act, as a director or secretary of a company. Complex Structures are a key method used to disguise Beneficial Ownership. These involve the use of legal persons and arrangements to distance the Beneficial Owner from an asset through very complex chains of ownership. They can also add numerous layers of ownership between an asset and the Beneficial Owner in different jurisdictions and use different types of legal structures.

Hence, a Corporate Vehicle, such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements have legitimate commercial purposes. However, corporate vehicles have been misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other illegal activities.

A common type of corporate vehicle used within complex structures and created via Trusts is a Private Investment Vehicle or Companies. Such investment companies have few investors with no intention of making a public offering. These are usually created by affluent individuals to hold their assets and can also be used for tax evasion and money laundering.

One of the notable events in 2016 was the release of the "Panama Papers" by the International Consortium of Investigative Journalists (ICIJ). These documents were obtained from the records of the law firm Mossack Fonseca & Co., and they revealed the Beneficial Ownership of thousands of offshore corporations. While many of these corporations were used for legal purposes, it became evident that some Beneficial Ownership was concealed for unlawful reasons. The papers exposed hidden business activities and assets of various prominent public figures, world leaders, and entrepreneurs. In response to the scandalous revelations, the Icelandic Prime Minister, Sigmundur Gunnlaugsson, resigned from office.

## AVAILABILITY OF BENEFICIAL OWNERSHIP INFORMATION

In many jurisdictions, Beneficial Ownership information is typically restricted and available only to specific competent authorities within the jurisdiction, with limited public access. However, in Nigeria, there exists a public register known as the Person with Significant Control (PSC) Register,

vi. Reporting any inconsistency between the BO information in the public register and the BO information in the Bank's records to the Corporate Affairs Commission

vii. Adoption of a Risk Based Approach must be in place. This means that countries, competent authorities, and Financial Institutions are expected to identify, assess, and understand the money laundering, terrorism financing, and proliferation financing (ML/TF/PF) risks to which they are exposed, and take AML/CFT/CPF measures commensurate to those risks to mitigate them effectively.

viii. Sufficient IT infrastructures and technology can aid in detecting trends and suspicions related to complex legal arrangements and link them through their UBOs to identify potential organized criminal activity. ix. Banks and Other Financial Institutions in turn, should have tight controls in place, followed by enforcement actions for non-compliance of such measures. This will ensure that staff are on top of the necessary guides to follow.

x. Training and sensitisation of industry trends to employees of Banks and Other Financial Institutions remain key, as it equips these employees with the requisite skills required to conduct due diligence on such customers.

## CONCLUSION

Unless all hands are on deck to adopt proactive measures to ensure that Ultimate Beneficial Ownership is identified, verified, maintained, and updated regularly, all efforts to remove Nigeria from the Grey List of the Financial Action Task Force would be in vain. Onwards Enhanced Due Diligence measures must be adopted by Banks and Other Financial Institutions to implement additional regulatory obligations, as it concerns Beneficial Ownership, and further compliance risks.

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