

Report of a study visit by a group of Nigerian officials to the United Kingdom to exchange information and best practices with their UK counterparts who are working on beneficial ownership

IMPROVING THE BUSINESS ENVIRONMENT IN NIGERIA THROUGH TRANSPARENCY IN THE MANAGEMENT OF BENEFICIAL OWNERSHIP

A Policy Brief



Federal Ministry of Justice



Promoting Responsible Business
through Collective Action

February 2017



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POLICY BRIEF

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February 2017

This report is co-authored and produced by the participants in a study visit to the UK jointly organised by the Federal Ministry of Justice of Nigeria (FMOJ) and IBLF Global. The delegation comprised representatives of FMOJ, Nigeria Extractive Industry Transparency Initiative (NEITI), Corporate Affairs Commission (CAC), IBLF Global. The visit was funded by the Foreign and Commonwealth Office of the United Kingdom (FCO). The co-authors¹ wish to acknowledge the generous support of the above-mentioned organisations. The opinions in this paper are the authors' own and do not necessarily reflect the official positions of the organisations they represent.

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EXECUTIVE SUMMARY

During the London Anti-Corruption Summit held on 12th May 2016², Nigeria's President made a number of commitments to strengthen the capacity of institutions to combat corruption. One of the key commitments, based on the assumption that lack of transparency in the business environment provides opportunities for corruption, was to strengthen the legal framework and enforcement around beneficial ownership, in particular through "establishing a public central register of company beneficial ownership information"³.

This project, "Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership" was devised to assist public officials whose role is to implement the President's commitments, to set up an effective beneficial ownership regime in Nigeria. As part of this initiative, a group of Nigerian officials visited the United Kingdom⁴, in late January 2017, to exchange information and best practices with their UK counterparts about beneficial ownership, and in particular the establishment and management of a register of beneficial owners. This report provides a summary of their findings.

There is more information about the people and organisations the group met in [Appendix 1](#).

During the visit, the group identified a number of challenges that the UK had to overcome when introducing their beneficial ownership register. The group also observed that introducing a beneficial ownership register is complex and requires multidisciplinary efforts. The process for the development of the register would require broad consultation across several stakeholders, both inside and outside Government.

This report accordingly serves as a first step in a broad consultation process aiming to hear the views of all the groups likely to be involved in, and affected by, the establishment of a register in Nigeria. Based on their insights into the UK experience, the group is putting forward in this report a number of recommendations (see the section on [Recommendations](#) below). The recommendations cover structural and administrative challenges that would need to be overcome in the initial setting up of the register

² <https://www.gov.uk/Government/topical-events/anti-corruption-summit-london-2016>

³ https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf

⁴ Thanks are owed to the British High Commission in Abuja whose UK Prosperity Fund generously funded the visit.



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including thorough consultation with stakeholders. They also highlight areas for special attention such as the level of the reporting threshold, reliability and verification of data, sanctions in case of non-compliance, as well as institutional support and training for relevant officials.

It is hoped that these recommendations will launch a lively exchange of ideas within Government and with business and civil society about the best way of establishing the register and making it accessible to the public. These recommendations will be presented to a number of consultative fora, the first of which was held on 9th February 2017 in Abuja, under the coordination of the Federal Ministry of Justice. It is hoped that by the close of this year, the core recommendations would have been implemented.

At the end of the visit, the group concluded that the commitment of Nigeria to establishing a beneficial ownership register has already received wide acclaim both in the UK and globally. If the beneficial ownership register can be introduced successfully in Nigeria, it will help to rebuild the confidence of foreign investors in the Nigerian economy who are keen to see more transparency in both business and Government affairs. It will also become a reference point for other countries in Africa and beyond, thus further improving the reputation of Nigeria as a place where transparent and fair business can be done.



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I. A QUICK INTRODUCTION TO BENEFICIAL OWNERSHIP

I.1 Global Legal Principles on Beneficial Ownership

The starting point for understanding beneficial ownership is its definition. Black's Law Dictionary (2nd Pocket ed. 2001 pg. 508) defines a "Beneficial Owner" as a legal term where specific property rights ("use and title") in equity belong to a person even though legal title of the property belongs to another person.

The Financial Action Task Force on Money Laundering (FATF), an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing, stated in its October 2014 Guidance on Beneficial Ownership and Transparency that "the term 'beneficial owner' refers to the natural person(s) who ultimately owns or controls a legal entity and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."⁵

The terms "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

I.2 Legal Ownership vs Legal Control

FATF Recommendations 24 and 25 distinguish the concepts of legal ownership and control. While legal ownership means the natural or legal persons (depending on the respective jurisdictions' legal provisions) who own the legal person, legal control on the other hand refers to the ability to take relevant decisions within the legal person to impose those resolutions, which can be acquired by several means (for example, by owning or controlling a block of shares or being signatory to accounts).

Transparency International (TI), describes a beneficial owner as the "natural person" who ultimately owns, controls or benefits from a company or trust fund and the income it generates. The term is used to contrast with the legal or Nominee Company and trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits.

⁵ FATF Guidance on Beneficial Ownership and Transparency, October 2014



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II. WHY IS A REGISTER OF BENEFICIAL OWNERS IMPORTANT NOW IN NIGERIA?

II.1 The Global Context

The businesses that drive the process of development in most countries are not immune from being associated with corrupt practices. Companies, both domestic and multinational, have often been found to be engaged in rent-seeking, bribery and underhand practices that hinder healthy business growth, particularly in developing countries. Often, companies are registered for the purpose of circumventing due process and for money laundering. For instance, research conducted by FATF on ‘corporate vehicles’ has shown that some business entities exist solely on paper without the requisite obligation to list the real people who actually own or control them⁶.

In the extractives industry, for example, these business entities are used to hold extractive rights and provide a channel for transferring extracted resources out of the host countries without paying specified royalties and taxes. These practices also allow the beneficial owners to avoid responsibility for violation of laws and regulations on labor and tax.

Another example is where “shell” companies are used by Politically Exposed Persons (PEPs) and wealthy individuals to move proceeds of corruption that are disguised through the purchase of assets such as private jets, shares in “blue-chip” companies and real estate. As reported in the media, most individuals or corporate bodies involved in the Panama Papers scandal circumvented financial regulations, and sought to evade payment of tax by hiding their assets or interests in corporate bodies in offshore financial centers.

Some of these corporate entities are also used by corrupt individuals to pay bribes, facilitation fees and to avoid trade sanctions or engage in trade mispricing in order to evade payment of tariffs.

As criminals seek to obscure the identities of ultimate beneficiaries of corporate bodies, complex ownership trails that transcend geographical and legal boundaries make the task of determining whom companies and financial services organisations are doing business with more difficult. For example, investigations into the alleged bribery by leaders of the football world’s body FIFA have revealed how complex networks of companies were deliberately created to obscure the details of ultimate beneficial owners.

⁶ The Misuse of Corporate Vehicles, including Trust and Company Service Providers, FATF, 2006 <http://www.fatf-gafi.org/media/fatf/documents/reports/Misuse%20of%20Corporate%20Vehicles%20including%20Trusts%20and%20Company%20Services%20Providers.pdf>



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Global regulations require financial institutions to monitor customers for purpose of anti-money laundering (AML), anti-bribery and corruption. This includes regular checks, particularly in relation to PEPs involved in companies or financial transactions. Obscurity over who is the ultimate beneficial owner of a company can militate against the ability of banks and other financial institutions to conduct effective checks with the attendant consequence that these institutions become unwitting conduits for the perpetuation of financial crimes and corruption.

The Group of 20 (G20), an international forum of governments from 20 major developed and emerging economies, captured the imperatives of transparency and beneficial ownership when it stated in its High-Level Principles on Beneficial Ownership and Transparency that the transparency of beneficial ownership of legal persons and arrangements, is a high priority.⁷ The G20 urged countries to implement the FATF Recommendations 24 and 25. The G20 High-Level Principles encapsulate the FATF Recommendations. For example, the Principles require countries to have a definition of “beneficial owner” that captures the natural person(s) who ultimately own(s) or control(s) the legal person or legal arrangement and ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current. Countries are urged by the G20 to “assess the existing and emerging risk associated with different types of persons and arrangements, which should be addressed from a domestic and international perspective”.

II.2 Nigeria’s Strategy Towards the Establishment of a Register of Beneficial Owners

Transparency International’s (TI) Corruption Perception Index for 2016 placed Nigeria at a low 136 position out of 176 countries with a score of 28/100⁸. Furthermore, Nigeria is currently ranked at 169 out of 190 countries in the World Bank’s Ease of Doing Business Index for 2017⁹. Nigeria moved up only one place from 170 since the 2016 World Bank Index.

The perception is that countries where corruption is rife are unlikely to enforce international investment and company laws. Unless there is a clear guarantee of the enforcement of these laws, investors will be wary to invest in an environment where their investments are unprotected. Lack of investment undermines economic growth and leads to the economy’s over-reliance on natural resources and their fluctuating prices. These negative perceptions of Nigeria’s corruption landscape serve to erode the efforts of the Government to attract investors to Nigeria.

It is in this sense that the urgent advocacy for a beneficial ownership register is to be understood. A central register of beneficial ownership information is viewed as a platform to make the information

⁷ G20 High-Level Principles on Beneficial Ownership and Transparency, adopted in Sydney, Australia in 2014

⁸ https://www.transparency.org/news/feature/corruption_perceptions_index_2016

⁹ <http://www.doingbusiness.org/data/exploreeconomies/nigeria>



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available to financial institutions in conducting their customer due diligence procedures for AML purposes, to law enforcement authorities and other authorities who may require them.

More than ever before, the Government has shown its determination to implement the FATF Money Laundering Recommendations¹⁰. Nigeria's commitments at the London Summit make it clear that a key policy for fighting money laundering is the establishment of a beneficial ownership register.

Also, in 2016, Nigeria was admitted into the Open Government Partnership (OGP)¹¹, thus demonstrating the determination of Nigeria to fight corruption by ensuring transparency and accountability in the conduct of government business. Nigeria's commitment to the Open Government Partnership (OGP) Principles is focused on four thematic areas namely, fiscal transparency, anti-corruption, access to information and citizen participation in governance. One of the commitments under the Nigeria's OGP National Action Plan is the need to establish transparency of beneficial owners of businesses.

The current Government of Nigeria set out Nigeria's strategy for exposing corruption as contained in the President's 2016 Country Statement to the London Anti-Corruption Summit¹² and the commitments made in the National Action Plan of the Open Government Partnership¹³:

- i. Beneficial Ownership Transparency – that includes establishing a public central register of company beneficial ownership information and the enactment of the Anti-Money Laundering (amendment) Act;
- ii. Extractive Industry (Oil Sector and Solid Mineral) - Nigeria will work to enhance company disclosure on the payments to governments for the sale of oil, gas and mineral as well as implement the new 2016 EITI Standard, in particular the requirements on beneficial ownership and the sale of the state's share of production; and
- iii. Establishment of a transparent central register of foreign companies bidding on public contracts and buying property;

¹⁰ <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

Although Nigeria is not a member of the FATF, however, it is a founding member of the Intergovernmental Action Group against Money Laundering in West Africa (<http://www.giaba.org/>) under which Nigeria commits to the full implementation of FATF International standards.

¹¹ <http://www.opengovpartnership.org/> and <http://www.opengovpartnership.org/country/nigeria/action-plan>

¹² https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf

¹³ <http://www.justice.gov.ng/documents/FINAL-NIGERIA%20NATIONAL%20ACTION%20PLAN%20ON%20OPEN%20GOVERNMENT%20PARTNERSHIP.pdf>



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iv. Preventing the facilitation of corruption: Nigeria commits to deploying public-private information-sharing partnerships to bring together governments, law enforcement, regulators and the financial sector to detect, prevent and disrupt money laundering linked to corruption.

v. Public Procurement and Fiscal Transparency. Nigeria will work towards full implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority.

vi. Tax Transparency: Nigeria will sign up to the Common Reporting Standard initiative while committing to join the Addis Tax Initiative.

Nigeria faces a number of challenges in its move towards providing the legal framework, data-gathering capability and related measures in order to ensure a beneficial ownership system that meets international best practice. These challenges include a lack of inter-agency cooperation, a lack of intelligence-sharing platforms, a weak legal system, weak capacity and lack of collaboration between the public and private sectors in the exchange of information.



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III. LESSONS LEARNT IN INTRODUCING A BENEFICIAL OWNERSHIP REGISTER IN THE UK

The United Kingdom is ahead on the global drive to implement a central register of company beneficial information.

TI has rated the UK as the only country having a strong legal framework for the identification of the ultimate beneficial ownership of assets or companies¹⁴. This rating is attributed to the introduction of a register of People of Significant Control (PSCs). This means the individuals who have control over a company pursuant to the provisions of the Small Business, Enterprise and Employment Act (SBEEA) 2015¹⁵. The primary objective is to move beyond a simple register of shareholders and instead create a public record of anyone who exercises control over the corporate entities.

The Act, which came into force on 6 April 2016, requires all UK companies (including limited companies and partnerships but not publicly traded companies which were already subject to existing legislation) to maintain a register of PSCs. PSCs must be included in the register if they meet one or more of the following five conditions:

- Direct or indirect ownership of more than 25% of the company's shares;
- Direct or indirect holding of more than 25% of the company's voting rights;
- Direct or indirect power to appoint or remove the majority of the company's board of directors;
- Otherwise has the right to exercise, or actually exercises, significant influence or control over the company;
- Has the right to exercise, or actually exercises, significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions.

The register is open to the public for inspection. The information is filed at Companies House¹⁶ and is freely available online. The information supplied must be updated in Companies House every 12 months. The residential addresses and day (excluding month or year) of the date of birth of individuals are disclosed. If there is serious risk of violence to the person whose name is on the register, an application can be made to keep the information private. Failure to comply with the register's conditions will be met with criminal sanctions.

¹⁴ Transparency International Report, 12th November 2015: 'Just For Show? Reviewing G20 Promises On Beneficial Ownership'

¹⁵ The United Kingdom's 'Small Business, Enterprise and Employment Act (SBEEA) 2015' received Royal assent on 26 March 2015

¹⁶ Companies House is the equivalent of Nigeria's Corporate Affairs Commission



The implementation of the new rules has been accomplished through the SBEEA 2015 which has inserted a new part 21A and schedules 1A and 1B into the Companies Act 2006¹⁷. The details relating to certain provisions are contained in the Register of People with Significant Control Regulations (RPSCR) 2016¹⁸. Also, the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 apply the provisions to Limited Liability Partnerships (LLPs) while the European Public Limited Liability Company (Register of People with Significant Control) Regulations 2016 apply the provisions to *Societates Europaeae* (SEs)¹⁹. The UK has also published Guidance Notes on the new legal regime²⁰.

Laudable as these steps are, they have not been without challenges. Frequently, the challenges consist not in the lack of common standards to improve transparency, but in the effective implementation of those measures.

Challenges which the implementation of a register of beneficial owners in the UK has encountered since its inception in April 2016 include:

- **Data validation:** Companies House is still working on improving data which, they have noted, may be needed because of: (a) the manner in which it was collected; (b) instances of what appeared to be non-compliance by those filing the reports; (c) lack of unique identifiers for individuals and some companies. The UK authorities have indicated that efforts are being made to resolve this by assigning beneficial owners unique numbers to enable better cross-matching;
- **Support from business:** Companies initially sought to resist the setting up of the beneficial ownership register because of the compliance costs associated with it. Some of the businesses visited noted that Government should provide incentives to improve compliance and to reduce costs in the long term;

¹⁷ The **Companies Act 2006** (c 46) is an Act of the Parliament of the **United Kingdom** that forms the primary source of **UK** company law.

¹⁸ Register of People with Significant Control Regulations 2016 apply to UK incorporated companies limited by shares, companies limited by guarantee, unlimited companies.

¹⁹ *Societas Europaea* means a European Public Limited-Liability Company (or SE) within the meaning of the Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company which is to be, or is, registered in the United Kingdom

²⁰ These include:

- (a) Non-Statutory Guidance for Companies, *Societates Europaeae* and Limited Liability Partnerships on the Register of People with Significant Control (Non-statutory guidance for companies) together with Summary Guidance;
- (b) Non-Statutory Guidance for People of Significant Control over Companies, *Societates Europaeae* and limited Liability Partnerships (Non-statutory guidance for PSCs);
- (c) Statutory guidance on the meaning of 'significant influence or control' in the context of companies (Statutory Guidance for Companies);
- (d) Statutory guidance on the meaning of 'significant influence or control' in the context of LLPs (Statutory Guidance on LLPs).



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- **Materiality threshold of 25%:** There is a strong argument for reduction of the threshold as it is suspected that this is being exploited by some businesses to avoid full compliance with the reporting rules;
- **Data protection and privacy legislation:** The challenge of how to strike a balance between data protection and privacy legislation on one hand, and the need for openness and transparency on the other, still exists. The need to protect persons that may be vulnerable means that Companies House must suppress certain vital information. The law also requires that certain information such as date of birth and home addresses should not be accessible to the general public in view of the risk that the public register could increase instances of identity theft, cybercrime and extortion;
- **Limitations of a national register:** The absence of a global public register of beneficial owners limits the effectiveness of the UK public register since the ultimate beneficial owner of a company registered in the UK may in fact be in another jurisdiction outside the reach of UK law enforcement agencies;
- **Trusts are not covered under the current register of beneficial owners:** Civil Society Organisations (CSOs) have argued that there is also a need to extend coverage to trusts. Presently the legislation covers only limited companies and liability partnerships. The register also does not cover the British Overseas Territories that are all too often have become havens for PSCs;
- **Collection of data:** There are continuing doubts as to whether a centralised register can adequately collect, verify and make beneficial ownership information available to tax and regulatory authorities, and this has raised questions about the effectiveness of the register. In 2015, Professor Jason Sharman was commissioned to analyse the effectiveness of central registers and licences to intermediaries in combatting financial crime. In his report²¹, Professor Sharman concluded that in addition to central registers, licensed intermediaries are needed to effectively capture beneficial ownership information;
- **Limitations to Self-Reporting:** A register that relies on self-reporting as in the UK example may be undermined by the risk that any criminal consciously hiding under the guise of a legitimate company is unlikely to comply with the requirement to self-report. However, the services of

²¹ "Solving the Beneficial Ownership Conundrum: Central Registries and Licensed Intermediaries", Centre for Governance and Public Policy, Griffith University Australia, 2015



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Corporate Service Providers (CSPs) can assist in the proper verification of false reporting or under reporting;

- **Human rights issues:** Article 8 of the UK Human Rights Act 1998 states that “everyone has the right to respect for his private and family life, his home and his correspondence.”²² Human rights activists have argued that the public register is an unnecessary and disproportionate intrusion into an individual’s private life; However, the UK has always balanced the need for the protection of human rights and the need to protect the society from those who use corporate vehicles to commit crime;
- **Overlapping responsibilities:** Most often, overlapping of responsibilities in governmental institutions can lead to tensions between departments, especially at the early stage of negotiating a new policy. In the case of the UK Government, these risks seem to have been well managed, and now that the register has been set up, there appears to be a clear delineation between policy and regulatory authorities and implementation authorities.

²² UK Human Rights Act 1998, CAP 42-Schedule1, Part 1, Article 8



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IV. PROSPECTS OF ESTABLISHING A BENEFICIAL OWNERSHIP REGISTER IN NIGERIA

IV.1 Nigeria's Beneficial Ownership System

Nigeria is determined to implement its obligations to tackle corruption and money laundering under the terms of the United Nations Convention Against Corruption (UNCAC) (2005) and the FATF Recommendation 24 (2012) that requires financial institutions to monitor customers for the purpose of AML and anti-bribery reporting including the conduct of regular checks of beneficial owners and PEPs.

Considering the risks that weak legal framework on beneficial ownership presents to developing and developed countries and recognising the role it plays in encouraging corrupt practices, the Government has set out measures to ensure that these risks are mitigated. For example, Nigeria's Corporate Affairs Commission (CAC) has developed a database for companies, charities and trusts registers and Nigeria has also introduced extractive industry standards on the collation of beneficial ownership information through the Nigeria Extractive Industry Transparency Initiative (NEITI) database.

IV.2 Legal Basis for the Implementation of the Public Register of Beneficial Owners

Nigeria adopted some aspects of the FATF Recommendations in its domestic legislation through the Money Laundering (Prohibition) (Amendment) Act No. 11, 2011 that defined "beneficial owner" as:

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

In order to overcome this challenge and fully comply with the FATF Recommendation, the Government of Nigeria has transmitted a draft Money Laundering Prohibition (Repeal) Act, 2016. This Bill provides for comprehensive definition of Beneficial Ownership to meet international standard. The Bill defines a Beneficial Owner as follows:

"Beneficial Owner" means, in the case of:

- a) A body corporate –
 - i. Any individual or anybody other than a company whose securities are listed on a regulated market, ultimately owns or controls, whether through direct or indirect



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- ownership or control, including through bearer share holdings, more than 25% of the shares or voting rights in the body, or
- ii. Anybody corporate, who otherwise exercises control over the management of the body;
- b) A partnership, any individual who -
- i. Ultimately is entitled to, or controls, whether the entitlement or control is direct or indirect, more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership, or
 - ii. Otherwise exercises control over the management of the partnership; and
- c) A trust, -
- i. Any individual who is entitled to a specified interest in at least 25% of the capital of the trust property,
 - ii. Any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a) of this subparagraph, the class of persons in whose main interest the trust is set up or operates; or
 - iii. Any individual who has control over the trust.

An attempt at defining a beneficial owner is contained in section 93(2) of the Companies and Allied Matters Act (CAMA), CAP P4, Laws of the Federation of Nigeria, LFN 2004 as follows: “A person is a substantial shareholder in a public company if he holds himself or by his nominee, shares in the company which entitle him to exercise at least 5 per cent of the unrestricted voting rights at any general meeting of the company”.

It is important to state that the importance of beneficial ownership disclosure as it relates to Public Companies has been reflected in CAMA. Accordingly, public companies are required to disclose beneficial interest in shares. To fully appreciate the extent of this provision, the Section 92(1) entitled “Disclosure of Capacity by Shareholder” is reproduced here verbatim:

“Notwithstanding the provisions of section 93 of this Act, every member of a company shall within seven days of becoming a member indicate to the company in writing— (a) the capacity in which he holds any shares in the company; and (b) if he holds them other than as beneficial owner, the particulars of the identity of persons interested in the shares in question and whether 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.”

Further, section 92 (2) states:



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“A company shall, not later than 14 days after receiving or coming into possession of the information required under subsection (1) of this section, notify the Commission of that information”.

Section 92(3) states:

“The Commission shall maintain a register of beneficial owners of shares in which it shall enter the information received from every company under subsection (2) of this section”.

The obligation to disclose is contained in Section 93 of the Act under the sub-head “Obligation of Disclosure by Substantial Shareholder in Public Company”. Accordingly, section 93(1) states that:

“A person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder”.

A sanction regime is provided for in Section 92 (4), (5) as follows:

“...If default is made by any member in complying with subsection (1) of this section or in purported compliance, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable to imprisonment for six months or to a fine of N50,000...If default is made by any company in complying with subsection (2) of this section, the company and every officer of the company shall be liable to a penalty of N100.00 for every day during which the default continues.”

The penalty for default is contained in Section 93(6) as follows:

“If any person or company fails to comply with the provisions of this section, the person or the company or both the person and the company shall respectively be liable to a penalty of N200.00 and N500.00 for every day during which the default continues”.

IV.3 Limitations of the Legal Provisions on Beneficial Ownership and other Challenges

Critics of these provisions have argued that the definition of Beneficial Ownership in the CAMA falls short of international standards as set out in the FATF Recommendations (24) 2012.

Notwithstanding the clear provisions of CAMA, there is no record of enforcement of this provision. This supports the view that the key challenge of beneficial ownership registers is actually that of



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implementation. The zeal to enforce compliance is eroded by the relatively weak sanctions regime (particularly in terms of the insignificant penalty of N200-N500 per day of default).

CAC has indicated that a 2017 CAMA Bill is under review and it would expand the provisions of Sections 92 to 93 to reflect the concerns expressed during the consultation session between the Government and CSOs that was held on 9th February 2017 in Abuja.

Apart from the absence of a comprehensive legal framework for implementing the beneficial ownership disclosure regime, Nigeria faces the following challenges:

- **Capacity and skills:** There is a need to ensure that the Federal Ministry of Justice (FMOJ) develops strong skills for the coordination of the legal regime to govern the register. CAC will need to bolster its legal and operational capacity to independently collate, manage and verify the information supplied by companies.
- **Cost of the register:** The cost of maintaining a sophisticated technology-driven register alongside the current legal ownership register should be taken into consideration at the stage of policy development.
- **Cost of compliance:** The cost of compliance for businesses should be taken into consideration while establishing the register;
- **Need for consultations:** Stakeholders are just beginning to understand the rationale for the beneficial ownership register.
- **Materiality of threshold:** This is still an ongoing discussion and the difference in the CAMA and the Anti-Money laundering bills as well as NEITI/standards need further consultation. It is suggested that Nigeria should consider a minimum threshold and then permit CAC not to go beyond that minimum threshold while issuing Guidance and Regulations to businesses in various sectors.
- **Human rights issues and Data Protection Legislation:** Enactment of Data Protection law in Nigeria is necessary in order to provide the balance between the need to fight crime and the need to protect individuals who may face risks associated with this public register.



V. RECOMMENDATIONS

1. **Policy leadership:** FMOJ should play a leading role in harmonising the related laws (CAMA, AML Laws and Data Protection Laws as well as Regulations and Policies) and codifying them in a manner that is clear, accessible and of general application;
2. **Implementation:** The register should be housed in CAC which is currently the single entity with the know-how and experience to receive, screen and collate large volumes of data relating to companies and trusts;
3. **Initial consultations:** FMOJ and CAC should identify key decision-makers within Government and key stakeholders outside Government. An operational chart should be created to clearly delineate the role of implementing stakeholders so as to avoid overlaps. The decision-makers and stakeholders, which will include large national and multinational companies, small- and medium-sized enterprises (SMEs), academia and civil society, should be extensively consulted on the introduction and likely impact of the register. FMOJ should draw up and publish a consultation timetable;
4. **On-going consultation:** The process of consultation and sharing ideas in a constructive manner should continue even after the legal framework and the register has been established. FMOJ should establish a Joint Money Laundering Monitoring Group comprising representatives of Government, business, and civil society for the sake of continuous dialogue and problem-solving;
5. **Work plan and scope:** FMOJ and CAC should develop a short- and medium-term work plan and timetable to establish a register which will cover not only Nigerian companies and trusts but also foreign companies with significant interest in Nigerian companies;
6. **Reporting threshold:** The reporting threshold needs further discussion. CAMA refers to 5% whilst the Money Laundering Prevention and Prohibition (Repeal Bill) refers to 25%. Resolving these discrepancies should be an important outcome of the consultation process led by FMOJ;
7. **Accessibility and Confidentiality:** CAC should also be able to retain specific personal data for restricted views during criminal investigations. CAC and law enforcement agencies would need to ensure that the implementation process complies with international human rights standards;



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8. **Data verification:** The integrity of data supplied will be determined by the ability to verify the data. CAC should be able to contract Licensed Corporate Service Providers to complement the effort of CAC inspectors in the verification of data supplied by companies;
9. **Data reliability:** In order to ensure the integrity of the data provided to the register, company directors or Chief Legal Counsels should certify on oath that the information or details filed are authentic, true, up-to-date and fully compliant with the beneficial ownership rules;
10. **Tax reform:** The ongoing efforts to review the tax regime to enhance revenue and prevent tax evasion and avoidance should be intensified. The Nigerian Tax Authority, FMOJ and CAC should ensure that the evasion and avoidance legislation and the new beneficial ownership regime are harmonised;
11. **Guidance for companies:** The enactment of beneficial ownership legislation, regulations and introduction of a register should be accompanied by the publication of Guidance Notes/Regulations for different sectors to encourage compliance by companies. The aim would be to clarify and simplify reporting solutions in order to enable them to reduce compliance costs while abiding by the full reporting requirements;
12. **Sanctions:** FMOJ should recommend strong sanctions for non-compliance in order to act as an effective deterrent to criminals;
13. **Skills and capacity-building:** In order to ensure the longer-term management of the beneficial ownership regime, FMOJ and CAC should jointly conduct a cross-departmental skills audit which will determine the skills needs of Government agencies involved in management of beneficial ownership.



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VI. NEXT STEPS

Following the 9th February 2017 Consultation Meeting on Beneficial Ownership Register, participants resolved to take the following steps towards achieving the objectives of establishing a public register²³

- CAC will work with the FMOJ/OGP Secretariat on the review and presentation of the draft bill to the Attorney General of the Federation for onward presentation to the National Assembly;
- The relevant stakeholders will organise additional public consultations to expand discussion on the review of the draft CAMA bill;
- CAC shall share the bill with the public on its website for further comments. The FMOJ, NEITI and CSOs can also upload the bill on their websites for wider dissemination;
- The FMOJ will seek to ensure that the AML bill is enacted into law.
- The FMOJ will seek to draft a regulation as an interim measure to commence the establishment of the register;
- The process towards the development of the register of beneficial ownership should set out the incentives that would be introduced into the ongoing consultation for stakeholders and businesses to encourage the effective implementation of the register;
- The meeting urged CAC to harmonise all corporate information in one database for better coordination;
- The CSOs committed to assist Government in promoting the establishment of the register as a major tool in fighting corruption;
- Various CSOs indicated their intention to expand the discussion and form a Civil Society Coalition on Beneficial Ownership;
- The FMOJ, in collaboration with the UK Government and IBLF Global, will organise a consultation for businesses and SMEs;
- The CSOs will organise a training session for stakeholder to ensure their broader engagement.

²³ The list of participants to this Beneficial Ownership Consultation, presentations from the speakers and the report of the meeting can be downloaded from www.justice.gov.ng.



APPENDIX 1: PROGRAMME OF STUDY VISIT TO UK

Meeting	People
HM Treasury (HMT)	<p>Robert Norfolk-Whittaker - Policy Advisor, Counter-Illicit Finance</p> <p>Tom Sargent – Policy Adviser, International Tax</p> <p>Paul Marsh – Head of Tax transparency and offshore tax evasion</p> <p>David Bagg - Policy Advisor International Tax</p> <p>Dave Matthews – Head of International Tax Strategy</p>
Open Government Partnership (OGP)	<p>Thom Townsend - Head, Open Government, UK representative to OGP</p>
National Crime Agency (NCA)	<p>Rachael Herbert – Senior Manager, Partnerships & Threat Reduction, Economic Crime Command</p>
Department for Business, Energy and Industrial Strategy (BEIS)	<p>Andrew Death - Assistant Director, Business Frameworks</p>
Cabinet Office	<p>The Right Hon Sir Eric Pickles - The Prime Minister’s Anti-Corruption Champion</p> <p>David Makinson - Senior Policy Advisor, Joint Anti Corruption Unit, European & Global Issues Secretariat, Cabinet Office</p>
British Bankers Association (BBA)	<p>John Thompson - Senior Policy Director, Head of Financial Crime (BBA)</p>
HSBC	<p>David Wren – Director of Tax Policy (BBA)</p>
Thomson Reuters (TR)	<p>Will Morgan - Group Government Affairs, Europe (HSBC)</p> <p>Andrew Yuille – Global Head of Risk Business Solutions (TR)</p> <p>Jorg Schaper – Global Head of Customer Risk (TR)</p>



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City of London Police	David Manley - Head of Fraud and Financial Investigation Team
Companies House	Alexandra Walters
Foreign and Commonwealth Office (FCO)	Rob Dixon – Head, West Africa Department Caroline Quinn – Deputy Head, Nigeria Unit Alison Crocket - Head, Anti-Corruption and Transparency Team, Economic Diplomacy Directorate
Global Witness (GW)	Sam Leon - Data Advisor (GW) Murray Worthy – Senior Campaigner (GW) Rachel Owens – Campaign Leader, Corruption Strand (GW)
Open Corporates (OC)	Hera Hussain – Policy and Community Lead (OC)
Open Ownership (OO)	Zosia Szykowski – Project Coordinator (OO)
Transparency International (TI-UK)	Steven Goodrich - Research Manager (TI-UK)
Extractive Industries Transparency Initiative (EITI)	Eddie Rich - Deputy Head

