

Guidance Note on Beneficial Ownership Identification and Verification for Designated Non Financial Business and Profession

1.0 Introduction

The Financial Action Task Force (FATF) Immediate Outcome 5 requires that countries put in place effective system to prevent legal persons and legal arrangements from being used for criminal purposes, make legal persons and legal arrangements sufficiently transparent and ensure that accurate and up-to-date basic and beneficial ownership information is available on timely basis. Accordingly, the Money Laundering (Prevention & Prohibition) Act, 2022 obliges Designated Non-Financial Businesses and Professions (DNFBPs) to identify the beneficial owner(s).

Outcomes of onsite examinations conducted after the completion of the National Inherent Risk Assessment (NIRA) revealed that DNFBPs lack the requisite knowledge of beneficial ownership identification and verification and expected action to take when transacting with Legal Persons and Legal Arrangements.

This Guidance Note will explain in details how this important requirement of the law can be implemented by DNFBPs, actions to be taken in specific circumstances and the procedure for the conduct of beneficial ownership identification and verification when transacting with clients or customers that are legal persons or legal arrangements.

1.1 Scope of Application

The Guidance applies to all DNFBPs in Nigeria and it covers the provisions of the ML(P&P)A 2022. DNFBPs should also be mindful of guidance notes and directives issued by competent authorities such as the Corporate Affairs Commission (CAC) and the Nigerian Financial Intelligence Unit, which would enhance their compliance.

2.1 What is Beneficial Ownership?

A beneficial owner refers to-

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

2.2 Legal Persons

In Nigeria, the following are the different types of legal persons that exist:

- i. Companies
- ii. Partnerships
- iii. Incorporated Trustees
- iv. Cooperative societies

Furthermore, companies are classified into:

1. **Private Limited Liability:** companies which shares are privately held and cannot invite the public to subscribe for shares or Debenture of the Company. This is the most prevalent in Nigeria
2. **Public Limited Liability Company:**With this type of legal person, the Company is allowed to invite the public to subscribe to its shares. Shares can be traded on the Stock Exchange.
3. **Private Company Limited by Guarantee (GTE):** This type of legal person is usually registered for not-for-Profit purposes, with the members liability limited to their financial guarantees.
4. **Public Company Limited by Guarantee:** Registration of this type of legal person is rare. This type of legal persons is usually registered for not-for-Profit purposes, with the members liability limited to their financial guarantees.

2.3 Other Types of Business Formations:

- I. **Limited Liability Partnership:** This is a new form of legal person introduced and registered by the Corporate Affairs Commission pursuant to CAMA, 2020. It is a partnership arrangement done with a legal personality, distinct from the partners. A minimum of two "Designated partners" with at least one resident in Nigeria is required. The partners are liable to the amount which they had agreed to contribute or an amount which would be outstanding should the partnership wound up.
- II. **Business Names:** This business formation type has legal personality which is distinct from the natural persons involved. The Proprietor(s) in a business name directly bears liability of the business. The Proprietors can either be individual or Corporate Body.
- III. **Limited Partnerships (LPs):** This is also a new form of business partnership introduced and registered by the

Corporate Affairs Commission pursuant to CAMA, 2020. It is a partnership arrangement that exists with a minimum of one limited partner and one general partner. In this type of partnership arrangements, the business is managed by the general partners whose liabilities are unlimited, however limited partner has limited liabilities except where the Limited partner takes part in the management of the partnership.

3.0 Inherent Risk of Money Laundering, Terrorist Financing among the Different Categories of Legal Persons and Business Formations

Nigeria conducted a National Inherent Risk Assessment (NIRA) of Legal Persons and Legal Arrangements in Nigeria and came up with the rating below:

| S/N | Types Of Legal Persons ¹ | Assessed Risk |
|-----|--|---------------|
| 1. | Private Companies Limited by shares | high |
| 2. | Private Unlimited Companies | low |
| 3. | Private Companies Limited by Guarantee | medium |
| 4. | Public Company Limited by Guarantee | low |
| 5. | Public Companies Limited by shares | low |
| 6. | Public Unlimited Company | Low |
| 7. | Limited Liability Partnership | medium |
| 8. | Incorporated Trustees | Medium |
| 9. | INGOs | Medium |
| 10. | Cooperative societies | Medium |
| 11. | Limited Partnership | medium |

Source: National Inherent Risk Assessment on Legal Persons and Legal Arrangements.

3.1 Private Companies Limited By Share were adjudged **High Risk** on the basis that they have been used to evade tax, engage in fraudulent trading and manipulation, act as vehicles to launder money and also finance terrorism activities. Similarly, **Business Names** were rated **High Risk** due to evidences of their abuse for money laundering and terrorist financing.

4.0 Legal Arrangements

The FATF refers to Legal Arrangements as express trusts or other similar legal arrangements.

FATF defines express trust as: “a trust clearly created by the settlor, usually in the form of a document e.g., a written deed of trust.” In its most basic form, an express trust will have a:

- i. Settlor—the person who contributes the trust assets.
- ii. Trustee—the person who holds the legal title to the trust assets and administers it.
- iii. Beneficiary—the person entitled to the trust assets.
- iv. Protector—some countries permit settlors to appoint a protector to oversee the trustee’s handling of the trust.

5.0 Obligations of DNFBPs in Identification and Verification of Beneficial Ownership in respect of Legal Persons and Legal Arrangements.

Section 4(1)c of the ML(P&P)A 2022, requires that a DNFBPs identify beneficial ownership using relevant information or data obtained from a reliable independent sources such the DNFBP is satisfied that it knows who the beneficial owner is.

Therefore, when establishing a business relationship with Legal Person or Legal Arrangements identified in this Guidance shall take the following measures:

5.1 Identify Ownership and Control

When the customer is a Legal person or arrangement, DNFBPs must identify the natural person(s) who exercises effective ultimate control over the legal person or arrangement. DNFBP must ensure that the natural persons that are beneficial owners of corporate entities are **unveiled to the minimum threshold of 5%.**

Due diligence shall be conducted on all legal persons and arrangements who own 5% shares or more in any legal entity.

- **For Legal Arrangements:**The natural persons are those who own the controlling interests(5% shares or more) and those who comprise the mind and management of the company;
- **For Legal Arrangements:**The natural persons are the settlor, the trustee and person exercising effective control over the trust and the beneficiaries.

5.2 Conduct Enhanced Due Diligence

Due diligence must be conducted on all legal persons and arrangements who owns 5% shares or more in the customer seeking to establish a business relationship with the DNFBP. For the categories of legal person identified as “High Risk” in the National Inherent Risk Assessment, 2022, enhanced due diligence must be taken as follows;

- a) Assess the beneficial owners ML &TF risks – i.e Politically exposed Persons, Foreigners and non-residents (particularly from high risk jurisdictions listed by the Nigerian Financial Intelligence Unit)
- b) Obtain information on the purpose and intended nature of the business relationship
- c) Identify the sources of wealth and source of funds
- d) Monitor the transaction on an ongoing basis
- e) Update Customer Due Diligence record for changes

5.3 Documentation of Policy and Procedure for Beneficial Ownership Identification and Verification

DNFBPs shall document their policy and procedures on beneficial ownership identification and verification, clearly showing the following:

1. How to determine who the customers' beneficial owner(s) are;
2. The information needed to be collected for beneficial owners;
3. The information to be verified about each beneficial owner and what reasonable measures to implement to do so;
4. The reliable and independent documentation or electronic data to be used to verify the identity documents of the beneficial owners;
5. How to update beneficial ownership information for a customer and manage changing risks over the duration of the business relationship.

6.0 Identification of Beneficial Ownership in Third Parties Transactions

Section 4(1)d of the ML(P&P)A 2022, requires DNFBPs to take reasonable measures to verify that any person purporting to act on behalf of the customer is so authorised, identified and verify the identity of that person. Therefore, shall undertake the following measures when dealing with following categories of third parties:

6.1 Professional Intermediaries

DNFBPs should appreciate the risk of money laundering and terrorist financing when dealing with customers/clients that are represented by professional intermediaries such as lawyers, estate agents, estate surveyors and valuers, Trust and Company Service Providers etc.,

DNFBPs must conduct due diligence on the professional intermediaries and request them to supply beneficial ownership of transaction.

Where the beneficial owner is legal person person or arrangement, all procedure applicable to such entities under this guidance must apply.

6.1 High Risk Professional Intermediaries and Third Parties

All the enhanced due diligence mentioned in this guideline must apply to professional intermediaries with inherent money laundering risks such as lawyers and law firms, estate agents and Trust and Company Service Providers.

7.0 Sanctions

DNFBPs should note that breaches and non-compliance with the relevant extant laws and regulations on beneficial ownership identification and verification shall be penalized in accordance with the provisions of the law and the EFCC Regulations for DNFBPs, 2022(Administrative Sanctions).

