

**ULTIMATE BENEFICIAL OWNERSHIP AND CAMA 2020:
EXPECTATIONS FROM REPORTING ENTITIES**

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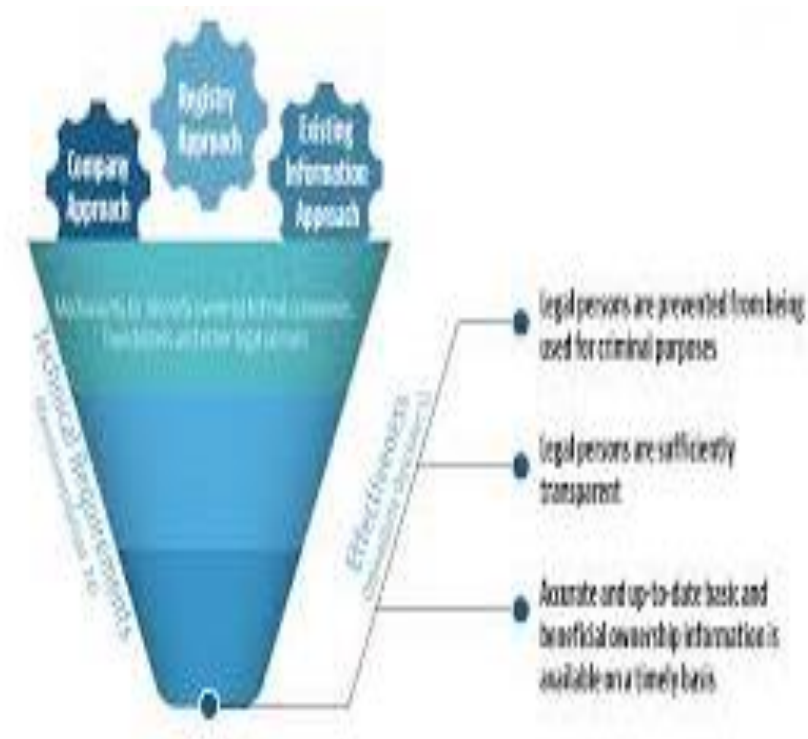
Background

- In 2003, the FATF became the first international body to set the best standards on beneficial ownership.
- In 2012, it updated its standards and clearly distinguished between basic ownership information (about the immediate legal owners of a company or trust) and beneficial ownership information (about the natural persons who ultimately own or control it)
- As part of FATF Recommendation 24 on Transparency and beneficial ownership of legal persons and arrangements, the standard setter expects countries to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.
- Countries are expected to ensure that there are measures to facilitate access to beneficial ownership and control information by **FIs** and **DNFBPs** undertaking the requirements for Customer Due Diligence (CDD).



Nexus between R24 and IO.5

- According to the FATF compliance with R24 by countries is intrinsically linked with the effectiveness of the measures assessed in immediate outcome 5 (IO.5) to prevent the misuse of legal persons for ML/TF.
- R24 requires countries to ensure that competent authorities have timely access to adequate, accurate and up-to-date beneficial ownership information. As a result measures to implement an effective system.
- IO.5 states clearly that an effective system should be put in place to
 - Prevent legal persons and legal arrangements from being used for criminal purposes.
 - Make legal persons and legal arrangements sufficiently transparent.
 - Ensure that accurate and up-to-date basic and beneficial ownership information is available on timely basis.



National Framework for UBO (1)

The Registry Approach

The Company Approach

Existing Information Approach

National Framework for UBO (2)

- **THE REGISTRY APPROACH**

- FATF expects countries in the implementation of Recommendation 24 to require company registers (i. e. CAC) to obtain and hold up to date information on beneficial ownership.
- It expects that all companies created in a country should be registered in a company registry which should record and maintain (at a min) basic information on a company including company name, proof of incorporation, legal form and status, address of the registered office, basic regulating powers and list directors.

- **THE COMPANY APPROACH**

- According to the FATF, countries should require companies themselves to obtain and hold up-to-date information on beneficial ownership by maintaining a list of shareholders or members and keeping it up-to-date.
- Companies should also keep updated the list of their representatives including their roles, functions and authority.

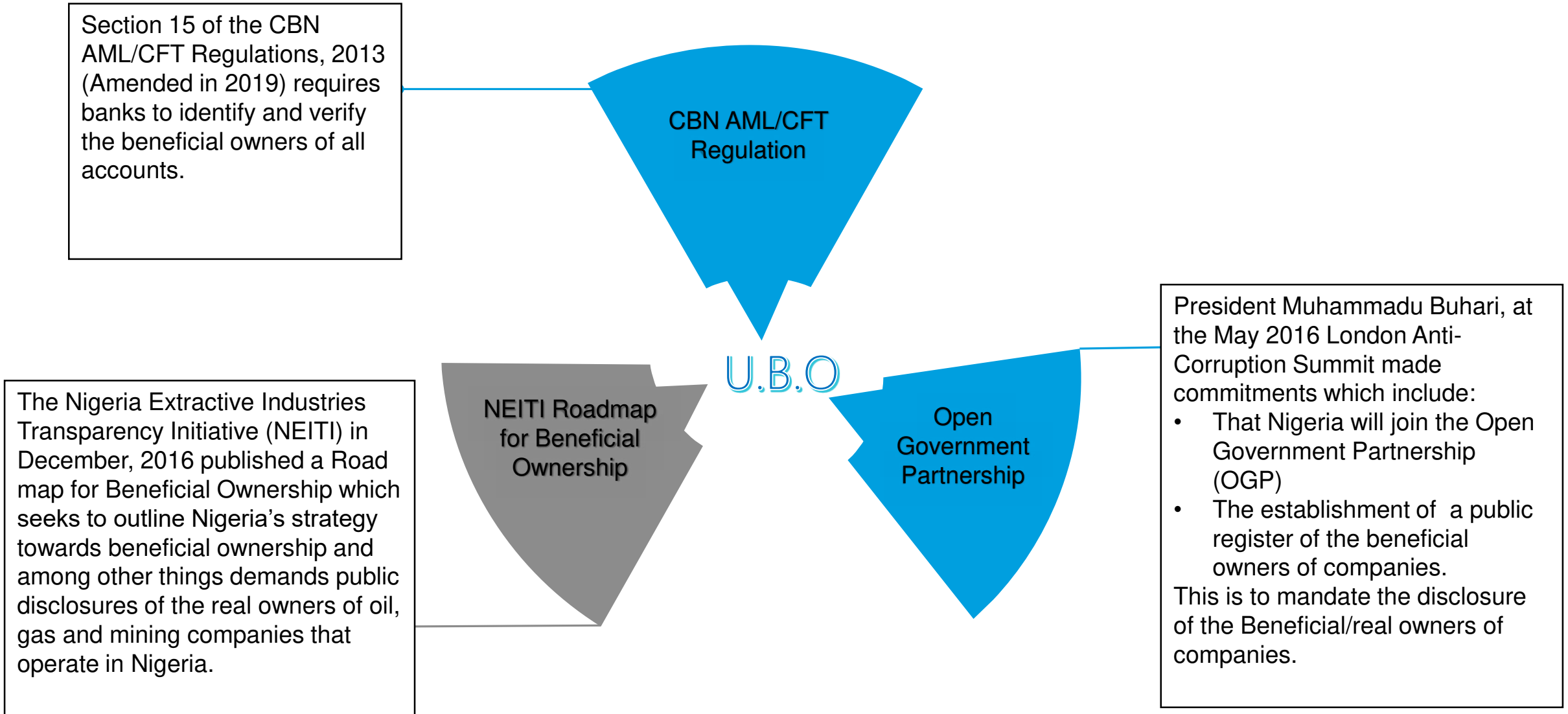
- **EXISTING INFORMATION APPROACH**

- According to the FATF, countries should also implement Recommendation 24 by using existing information collected on the beneficial ownership of corporate entities to identify beneficial owners.
- Possible sources of information include Company registers and other types of registries such as Land, Motor Vehicle and Moveable Property registries, Tax authorities, Stock Exchanges and other Commercial databases.

Open government partnership (OGP) and UBO

- Open Government Partnership (OGP) is an international multi-stakeholders initiative focused on improving transparency, accountability, citizen participation and responsiveness to citizens through technology and innovation.
- Nigeria joined the OGP in December 2016 and submitted a National Action Plan, which included the establishment of a CAC-hosted public register of the beneficial owners of all companies operating in Nigeria by December 2019.
- In furtherance to this commitment, The Companies Allied Matters Act made provisions to accommodate the unveiling of Ultimate Beneficial Ownership in Nigeria.

Domestic evolution of UBO



CAMA 2020 and UBO reforms

- Section 119, CAMA 2020
 - Disclosure of capacity by shareholders
- Section 120, CAMA 2020
 - Obligation of disclosure by substantial shareholders in public company
- Section 320: CAMA 2020
 - Register of Directors' residential addresses

CAMA 2020, Section 119

DISCLOSURE OF CAPACITY BY SHAREHOLDERS

- Section 119(1) Every person with significant control over a company shall within 7 days of becoming such a person, indicate to the company in writing the particulars of such control.
 - (2) A company after receiving or coming into possession of the information required shall not later than 1 month from the receipt of the information provided or any change therein, notify the commission of that information provided that a company shall in every annual return disclose the information required in respect of the year for which the return is made.
 - (3) The commission shall maintain a register of persons with significant control in which it shall enter the information received from the company or any change therein.
 - (4) A company shall inscribe against the name of every member in the register of members the information received in pursuance of the requirements.
 - (5) If default is made by any person or company in applying with these provision, the person or company and every officer of the company are liable to such fines as the commission may prescribe by regulation for every day during which the default continues.

CAMA 2020 SECTION 120

OBLIGATION OF DISCLOSURE BY SUBSTANTIAL SHAREHOLDER IN PUBLIC COMPANY

- Section 120
 - (1) A person who is a substantial shareholders in a public company shall give notice in writing to the company stating his name, address and full particular's of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.
 - (2)The substantial shareholders of a public company is defined as a person who holds himself or through his nominees 5% of the unrestricted voting rights at general meetings.

CAMA 2020, SECTION 320

REGISTER OF DIRECTORS' RESIDENTIAL ADDRESS

- Section 320
- (1) Every company shall keep a register of director' residential address
- (2) The register shall state the usual residential address of each of the company's directors.
- (3) If a director's usual residential address is the same as the service address (as stated in the company's register of directors) the register of directors' residential address need only contain an entry to the effect provided the services address is not the company's registered office.
- (4) If default is made in complying within this section, the company and each officer of the company are each liable to a penalty in such amount as the commission shall specify in its regulation.

Obligations of FIs and DNFIs

Understanding who ultimately has control of your customer plays an important role in detecting, disrupting and preventing money laundering and terrorism financing. It can also protect your business or organization from being exploited for other forms of criminal activity. All reporting entities must identify the beneficial owners of their customers and assess the money laundering/terrorism financing risk they pose. Financial institutions are required to take reasonable measures in respect of customers that are legal persons or legal arrangements to:

- understand the ownership and control structure of such a customer; and
- Determine the natural persons that ultimately own or control the customer.



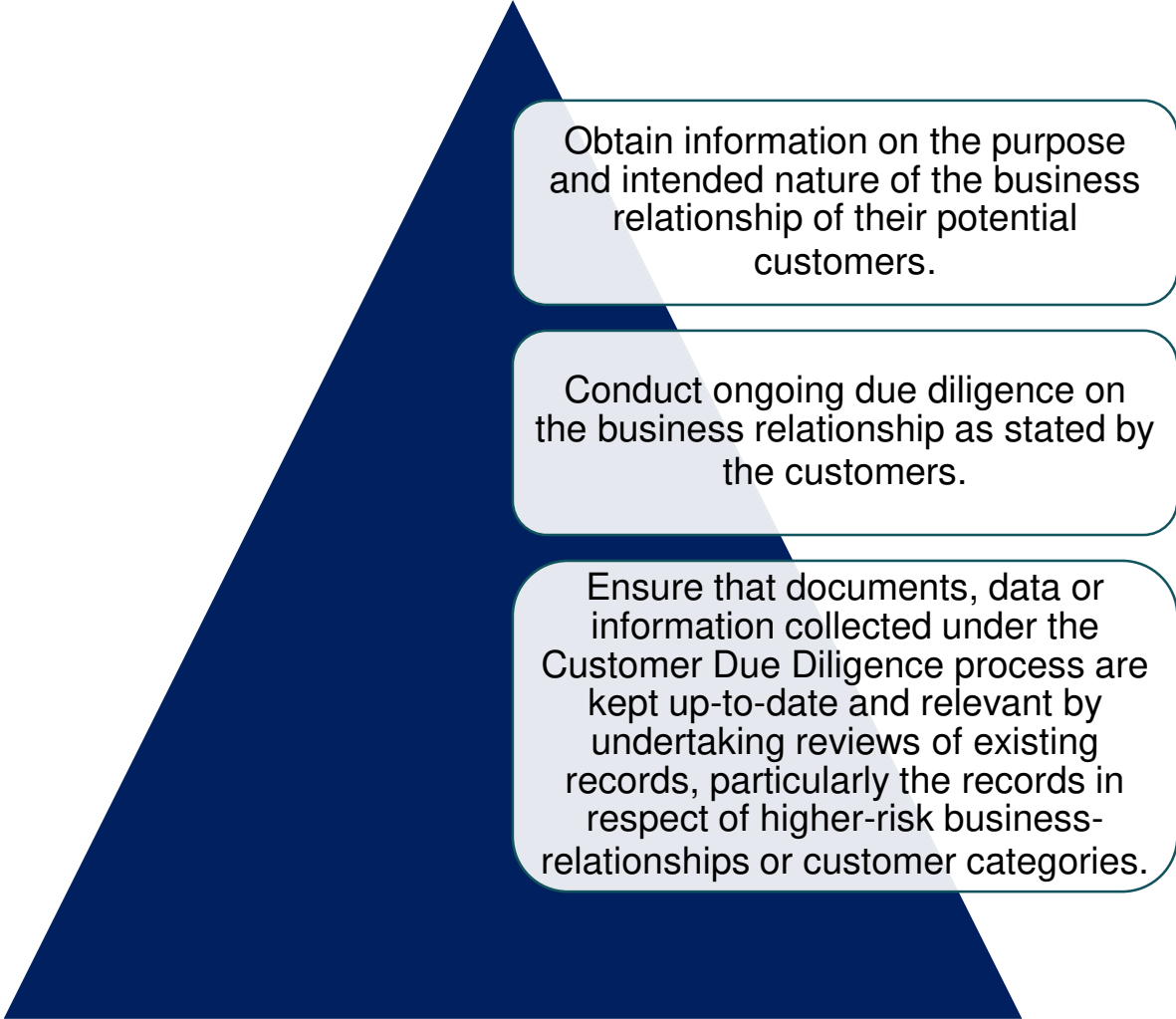
Obligations of FIs and DNFI

The natural persons include those persons who exercise ultimate and effective control over the legal person or arrangement. The CBN AML CFT Regulation 2019 Section 15 requires 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 and on all parent entities. Examples of types of measures needed to satisfactorily perform this function include:

- For companies - The natural persons are those who own the controlling interests and those who comprise the mind and management of the company; and
- For trusts – The natural persons are the settlor, the trustee and person exercising effective control over the trust and the beneficiaries.
- Note that a customer may have more than one beneficial owner.

Obligations of Financial Institutions

Financial Institutions are required to:



Obtain information on the purpose and intended nature of the business relationship of their potential customers.

Conduct ongoing due diligence on the business relationship as stated by the customers.

Ensure that documents, data or information collected under the Customer Due Diligence process are kept up-to-date and relevant by undertaking reviews of existing records, particularly the records in respect of higher-risk business-relationships or customer categories.

Obligations of Financial Institutions

The reporting institution AML/CTF program must set out how to meet obligations around beneficial owners. This includes documenting:



Obligations of Financial Institutions

Assessing beneficial owner's money laundering/terrorism financing risk

Financial Institutions must assess the different levels of money laundering/terrorism financing risks posed by its customers' beneficial owners.


For example, FIs should consider whether a beneficial owner:

- is a politically exposed person
- has links with a high-risk country, region or group.

There are different processes for verifying information for medium and low-risk beneficial owners compared to high-risk beneficial owners.

The beneficial owner of a customer may change over time. You must regularly review beneficial owner information and update your risk assessment of any new beneficial owner and the customer.


Benefits of Unveiling Ultimate Beneficial Owners




- From a reputational standpoint, businesses need to know who a UBO of a company is to combat fraud for the safety of their own business.



- It aids the recognition of the Leadership and Purpose of a Company.



- Identifying the beneficial owner is important in carrying out detailed risk assessment procedures.



- It assures the Companies of not having business relationship with proscribed individuals and entities.



- It prevents companies from facing possible regulatory sanctions.

Conclusion

In Fulfilment of the need for the establishment of a public register of beneficial owners of companies in Nigeria, Section 119 (3) of CAMA provides that the Commission shall maintain a register of persons with significant control in companies.

In addition to unveiling, identifying and verifying of the beneficial owners of all accounts in compliance with the CBN/AML CFT Regulation, Banks/Financial Institutions now have an obligation to notify the Commission about the Ultimate Beneficial owners of their respective institutions.

In essence, this shall promote good governance and transparency.





**thank
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