



Address By

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At the Consultative Forum on Beneficial Ownership

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Protocols:

1. Introduction

I wish to welcome you all to this consultative forum on beneficial ownership. I am deeply grateful for your hard work these past three days towards ensuring that the OGP commitments in Nigeria are actualized. I wish to thank our partners, particularly the United States Agency for International Development (USAID) and the Justice for All (J4A) Program of the British Government.

2. Background

2.1 Since President Muhammadu Buhari came into office in Nigeria, he made the fight against corruption a priority to foster economic development in Nigeria. In this regard, there is a strong commitment to ensure transparency and accountability in the business environment in Nigeria. During the London Anti-Corruption Summit that held on 12th May 2016, the President made commitments to strengthen the capacity of institutions to combat corruption as well as improve the legal framework on beneficial ownership principles. This commitment is borne out of the awareness that the lack of transparency in the business environment provides opportunity for corruption.

2.2 In the light of the 2016 Transparency International's Corruption Perception Index which places Nigeria at a lower rank of 136 out of 176 countries with a score of 28/100 and with Nigeria currently ranked as 169th in the World Bank's Ease of Doing Business Index for 2017, it has become imperative for the government to take every possible step to address the use of corporate entities in rent seeking and corruption through the establishment of beneficial ownership transparency initiative.

3. Beneficial Ownership Transparency Commitments At The UK Anti-Corruption.

3.1 Ladies and Gentlemen, permit me to remind you of Nigeria's commitment at the London Anti-Corruption Summit, they include commitment to:

- a) Establish a public central register of company beneficial ownership information.
- b) Implement bilateral arrangements that will ensure law enforcement in one partner country has full and effective access to the beneficial ownership information of companies incorporated in the other partner country.
- c) Ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. Nigeria is already collating some of this information through the Extractive Industry initiative process and would extend it to the other sectors
- d) Establish a transparent central register of foreign companies bidding on public contracts and buying public property.
- e) Welcome the proposal by developed countries to work together to improve the access of developing countries to beneficial ownership information for use in public contracting.
- f) Restrict the ability of those involved in grand corruption to travel, invest and do business overseas.
- g) Join the pilot initiative for automatic exchange of beneficial information.

4. Why is the Beneficial Ownership Public Register Important for Nigeria?

4.1 You are all aware that complex ownership of corporate entities that transcend geographical and legal boundaries make the task of determining which companies and financial services organizations are doing business in various jurisdictions difficult. As criminals seek to obscure the identities of ultimate beneficiaries from financial transactions, the World Bank estimates that corrupt politicians used secret companies to obscure their identities in 70 percent of more than 200 cases of grand corruption.

4.1 For example, investigations into the alleged bribery among leaders of the Federation of International Football Association (FIFA) revealed how complex networks of companies were deliberately created to obscure the details of ultimate beneficiaries.

4.2 In many jurisdictions, nominee directors or shareholders are used as a conduit to obscure the true identity of the ultimate beneficiary and this process may in fact be legitimate. 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.

4.3 Often, companies are registered for the purpose of circumventing due process and for money laundering. For instance, research conducted by the 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 them. In the extractive 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.

4.4 Another example is where 'shell' companies are used by politically exposed persons 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 estates. As reported in the **Panama Papers** scandal, most individuals or corporate bodies circumvented financial regulations, and sought to evade payment of tax by hiding their assets or interests in corporate

4.6 It is in this sense that the clamor or 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 available to financial institutions in conducting their customer due diligence procedures for anti-money laundering purposes and to law enforcement authorities that may require it for investigation purposes.

5. Current Nigeria Legal and Policy Framework on Beneficial Ownership

5.1 More than ever before, the Government is determined to implement the legal basis on which beneficial ownership is founded from both an international and national perspectives. Some of these include:

(a) Nigeria is determined to implement its obligation under the United Nations Convention Against Corruption and the Financial Action Task Force (FATF) Recommendation 24 (2012), towards dealing with corruption and money laundering. The FATF Recommendations require financial institutions to monitor customers for the purpose of anti-money laundering and anti-bribery reporting including the conduct of regular checks in relation to politically exposed persons.

Nigeria domesticated the FATF Recommendations in the Money Laundering (Prohibition) Act, 2011 (as amended) 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.

A more elaborate definition of beneficial owner is contained in the Money Laundering Prohibition and Prevention (Repeal) Bill, 2016. In addition, the government of Nigeria has developed anti-money laundering and combat of financing of terrorism Regulations (2013) to ensure compliance with customer due diligence requirements and to assist financial institutions to monitor and enforce the regulation.

(b) In 2016, Nigeria was admitted into the Open Government Partnership (OGP) following Nigeria's commitment to the Open Government Partnership (OGP) Principles on Transparency, Accountability and Citizen Participation. One of the commitments under the Nigeria's OGP National Action Plan is the need to establish transparency of beneficial owners of businesses. This commitment underscores the determination of Nigeria to fight corruption by ensuring transparency and accountability in the conduct of government business.

(c) It is important to state that the imperative of a beneficial ownership disclosure has been reflected in the Nigeria's Company law. By the provisions of Companies and Allied Matters Act (CAMA), Laws of the Federation of Nigeria, 2004, companies are required to disclose beneficial interest in shares. To fully appreciate the extent of this provision, it is here under reproduced verbatim with the heading: '*Disclosure of Capacity by Shareholder*'. Section 92(1) provides:

'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) provides that '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) provides that **'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.** A sanction regime is provided in Section 92(4), (5) and (6) as follows; 'A company shall inscribe against the name of the every*

member in the register of members the information received in pursuance of the requirement of this section.'

(5) 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.

(6) 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.

5.2 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**'. An attempt at defining a beneficial shareholder is contained in section 93(2) 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.**

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*'.

5.3 It is noteworthy that the information made available to CAC is not in the public space as there is no requirement of the law to maintain a public register available to interested persons. There is however a synergy between law enforcement and the CAC that enables the law enforcement agencies to access nominal data without first filing an application to CAC.

5.4 It is important to note that CAC is working on the Bill for an Act to Repeal the Company and Allied Matters Act with a view to

incorporating the international standards on beneficial ownership as set out in FATF Recommendations. Nigeria is also working closely with the United Kingdom government in the development of policies and required skills to implement the Presidential commitments.

6. Conclusion:

I will conclude by thanking my team who has worked assiduously to get us to this stage. I want to also extend my gratitude to my colleagues in the Federal Executive Council for their support to the implementation of Presidential initiatives on transparency and accountability measures. I am glad that most of the Ministries, Departments, and Agencies, as well as Civil Society Organizations who are members of the National Steering Committee are fully represented in the OGP process. I look forward to receiving the work plans developed by the OGP working groups over the past two days and the policy recommendations towards the effective implementation of the beneficial ownership register in Nigeria.

I have the honour once again to present to you and the members of the press the final National Anti-Corruption Strategy launched in Kano in December 2016 during the celebration of the 2016 Anti-Corruption Day and the Open Government Partnership National Action Plan. Feel free to contact my office through the OGP Secretariat contact below if you have any questions.

Thank you

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