

PERSONS WITH SIGNIFICANT CONTROL (PSC) REGULATIONS, 2022 - A VEHICLE FOR TRANSPARENCY IN CORPORATE GOVERNANCE IN NIGERIA

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Abstract

The Persons with Significant Control Regulations, 2022 (“PSC Regulations”) aims to address concerns about the impervious nature of business ownership, where only the legal and not necessarily, the beneficial owners of an entity’s shares are recorded, or disclosed to the public. The PSC Regulations requires all corporate entities to give detailed, timely and accurate information of their ultimate owner and/or controller, to the Corporate Affairs Commission (CAC). It is aimed at promoting transparency and accountability in corporate governance, as well as supporting law enforcement agencies in investigating cases of money laundering and other financial crimes. Utilising the doctrinal research method, this paper examines the impact of the PSC Regulations on transparency and accountability in corporate governance, and on the fight against corruption and money laundering in Nigeria. The paper finds that the aims of the PSC Regulations will easily be attained, if appropriate implementation mechanisms are put in place. The paper concludes by proffering some recommendations on how best to implement the PSC Regulations in Nigeria.

1.0

Introduction

The PSC Regulations and other similar legislations, such as the Central Bank of Nigeria (CBN) Guidance on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, 2023, are part of the measures put in place, to combat money laundering and terrorism financing in Nigeria, in accordance with the Financial Action Task Force (FATF)’s Guidelines¹, which demands that countries “ensure that adequate, accurate and timely information” on beneficial ownership of corporate entities is “accessible, to check corporate vehicles from being abused in the financial system”.²

The PSC Regulations apply only to Companies and Limited Liability Partnerships (LLPs) registered under Parts B and C, respectively, of the Companies and Allied Matters Act, 2020 (CAMA), and any other relevant entity specified under the PSC Regulations. The aforesaid entities are required to give detailed and accurate information of all natural persons, who ultimately own and control them to the CAC.³

In compliance with the PSC Regulations and Section 119(3) of CAMA 2020, which mandates the CAC to maintain a register of PSCs, known as the Beneficial Ownership Register (“the Register”), the CAC, in May 2023, launched an online Register, accessible online at “<https://bor.cac.gov.ng/>”. Through the Register, members of the public and government agencies can access, and generate reports on the information of PSCs. This is very commendable and the first of its kind in Africa.⁴

¹ Financial Action Taskforce (FATF) Guidelines, Transparency and Beneficial Ownership (2014), Paragraph 3, pg.3; See also Recommendation 24, Transparency and Beneficial Ownership of Legal Persons and Arrangement, FATF (2012-2022); International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France.

² CBN Guidelines on Ultimate Beneficial Owners of Legal Persons and Legal Arrangements, 2023.

³ Ibid, Regulation 2.

⁴ “Building Trust by Combating Corruption in Western and Central Africa” <<https://www.worldbank.org/en/news/feature/2023/12/13/building-trust-by-combating-corruption-in-western-and-central-africa>> Accessed 3 January 2024.

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2.0

Who is a PSC (Beneficial Owner)?

According to Regulation 14 of the PSC Regulations and Section 868 of CAMA, a PSC, also known as a beneficial owner, means:

“The natural person(s) who ultimately owns or controls a company or limited liability partnership or the natural person on whose behalf a transaction is being conducted, and includes those natural persons who exercise ultimate effective control over a legal person or arrangement or, be a person who meets any of the following conditions in relation to a company or limited liability partnership –

- (i) *holds at least 5% of the issued shares in a company or interest in a LLP either directly or indirectly,*
- (ii) *exercises at least 5% of the voting rights in a company or LLP directly or indirectly;*
- (iii) *holds a right directly or indirectly, to appoint or remove majority of the directors of the company or partners of the LLP;*
- (iv) *exercises significant influence or control, directly or indirectly, over the company or LLP; or*
- (v) *having the right to exercise, or actually exercises significant influence or control over the activities of a trust or firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual.⁵”*

Once any natural person meets the above criteria, he/she automatically qualifies as a PSC. In simple terms, a PSC is a “*natural person, who has ultimate (actual) ownership and control over a corporate entity, and not necessarily the legal owner (artificial person), or the person(s) entitled on paper to do so*”.⁶ The implication of this is that only natural persons (i.e. individuals), who ultimately own or control corporate entities, are required to be disclosed to the CAC as PSCs.

Furthermore, where some, or all of a company’s shareholders, or ultimate beneficial owners are corporate entity(ies), such corporate entity(ies) will also be required to present for filing as PSC in the company, the details of individual(s)/natural person(s), who ultimately control/or own the corporate entity, at the CAC.

It is pertinent to note that, the PSC Regulations allows corporate entities to present for filing as PSC, details of persons who are not members of the Company.⁷

The implication of the foregoing is that, Companies or LLPs may nominate individuals who are not beneficial owners, solely for the purpose of filing at the CAC, and the particulars of such nominated persons shall be inscribed in a separate register maintained for that purpose.

⁵ PSC Regulations 14.

⁶ CBN Guidelines, Paragraph 4.0.

⁷ PSC Regulations, 4(3).

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3.0

Obligations of PSCs, Companies and Limited Liability Partnerships under the PSC Regulations

By Sections 119 and 791 of CAMA, and Regulation 5 of the PSC Regulations, a PSC is obligated to formally notify the company or LLP in writing, within seven (7) days of becoming a PSC, and the company or LLP (including foreign owned companies and LLPs) are then required to disclose the information to the CAC, within one (1) month from the date of receipt of the information, from the concerned individual. Also, Companies or LLPs are required to “inscribe against the name of every member in the register of members, the information received from the PSC”.⁸

Where a company or LLP has reasonable cause to believe that a person is its PSC, it shall serve notice to disclose PSC information (the notice) on the person, requiring the person to provide the particulars set out in Regulation 4 of the PSC Regulations, and the “person shall comply with the requirements of the notice to disclose PSC information, not later than seven days from the date of receipt of the notice”.⁹ If the person fails to disclose the information required, the Company or LLP shall issue a warning notice to the person, and keep a copy of the warning notice in its register of members.¹⁰ If not complied with in seven days, the Company or LLP can restrict the interest, and note it in the register of members - the restriction voids transfers, rights, shares, and payments. However, if the Person complies within 14 days, the Company or LLP shall withdraw the restriction.¹¹

Furthermore, by Regulation 3 of the PSC Regulations, Companies and LLPs are obligated to submit PSC information to the CAC, during incorporation, filing of annual returns, amendments, or in any other case the CAC may determine. In the case of a foreign exempted company (i.e. a foreign company exempted from incorporation under section 80 of CAMA 2020), it shall submit PSC information to the CAC, at the point of notification of exemption, filing of annual report, and/or any change that may occur from time to time.

Where a government-owned entity is incorporated or established by other enactments, and owns or exercises significant control over any company or LLP, the company or LLP, wherein it has reportable shares or control, shall be required to submit to the CAC, information in respect of the Chief Executive Officer (CEO), or any other government official authorised, or designated by law to manage the government-owned entity.

Lastly, the entities must ensure that the PSC information is timeously disclosed, accurate and complete.¹²

⁸ PSC Regulations 2022, Regulation 4(1).

⁹ Ibid, Regulation 6(1).

¹⁰ Ibid, Regulation 6 (3) and 8.

¹¹ Ibid, Regulation 7.

¹² Ibid, Regulation 11.

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4.0 Confidentiality of PSC Information

Given the enormous content of the particulars required to be disclosed by PSCs, the Regulations put in place some safety measures, to ensure confidentiality of PSCs' information.

According to Regulation 9 of the PSC Regulations, a company or LLP shall not use or disclose any information about a PSC, except;

- a. for the purpose of communicating with the PSC;
- b. in order to comply with any requirements of these Regulations; or
- c. in order to comply with a court order.

The above notwithstanding, a Company may disclose the information of a PSC, upon receipt of the written consent of such PSC. Also, PSC information may be made available by the Company to the following:

- i. to the public, at no cost (subject to the provision of Regulation 17 of the Companies Regulations 2021 on Restriction of Protected and Personal Information);
- ii. Law Enforcement Agencies, Investigation Agencies; and
- iii. Any other relevant Competent Authorit(y)(ies), upon request.¹³

Outside these permissible circumstances, the PSC information is to be kept confidential at all times by the Company or LLP.

In the event of the dissolution of a Company or LLP, the liquidator shall maintain the particulars of PSCs for not less than five (5) years, from the date of dissolution of the Company or LLP.¹⁴

5.0 Consequence of Non-Compliance

To strengthen adherence, the CAC has imposed restrictions on companies, limiting their ability to make post-incorporation filings, unless they have duly complied with filing any outstanding Notice of PSC.

In addition, as outlined in the Regulations, where a company or LLP fails to comply with these reporting requirements, the company or LLP, and every officer of the company or LLP shall be liable to pay to the CAC, for everyday of the subsistence of the default, the following administrative penalty:

¹³ PSC Regulations 2022, Regulation 9.

¹⁴ Ibid, Regulation 9.

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S/N	Entity	Daily Default Penalty ₦
1.	Small Company	5,000
2.	Company other than small or Company Limited by Guarantee	10,000
3.	Public Company	25,000
4.	Limited Liability Partnership	5,000

From the above, if Company A (a small Company), fails to file its notice of PSC, Company A becomes liable to a default fee or penalty in the sum of ₦ 5,000 (Five Thousand Naira), for each day of the subsistence of the default, payable by each of its director (secretary inclusive), and the company, respectively. It is pertinent to note that, the Regulations also provided several other monetary penalties for different forms of breaches, envisaged by the CAC, in case of default by the PSC/officers of the defaulting company.

Further, the status of the Company or LLP shall be reflected as “inactive” on the PSC register, and all other relevant online portals of the CAC.

Lastly, the CAC shall not issue a Letter of Good Standing to any company or LLP that has failed to comply with its PSC reporting obligations.¹⁵

6.0

Significance of the PSC Regulations to Corporate Governance

The PSC Regulations and other similar regulations are a good move by the Nigerian government and regulatory bodies within the financial sector, in the fight against the menace of money laundering, terrorism financing, and other financial crimes, perpetrated by persons, who hide behind the corporate veil. Thus, the implementation of the PSC Regulations enhances the application of the principle of “lifting the corporate veil”, as the disclosure of PSC information in the Central Register, would reveal the true identity of individuals, who use companies as money laundering vehicles, or as mediums to finance terrorism. This is particularly crucial, as Nigeria strives to be removed from the grey list, for not properly combating money laundering and terrorism financing.

In sum, the PSC Regulations discourages the creation of shell companies used for money laundering, or concealing corrupt practices, since the ultimate beneficial owners must be disclosed. The PSC Regulations also enhance the transparency in entity ownership.

7.0

Conclusion/Recommendations

The PSC Regulations and the disclosure mechanism, such as the PSC Register, are seen as a potential remedy to the illicit flow of proceeds of corruption, including embezzlement of public funds, money laundering and tax frauds, using corporate entities. The open availability of details of corporate entity ownership, takes away the anonymity under which perpetrators of financial crimes, can transfer their unlawfully obtained funds out of the country.

¹⁵ PSC Regulations 2022, Regulation 12.

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To be able to achieve the aims of the PSC Regulations, the PSC Register and the means of notification should be made to work efficiently.

We are aware that the CAC has a portal for filing PSC notices, as well as update of PSC particulars, however, the portal at times, experiences technical glitches when uploading PSC information, and this slows down the process. Thus, the CAC should ensure that the portal works efficiently, to ease the submission of PSC information by companies and LLPs. The CAC should also come up with a mechanism to ensure and verify that the information provided by the PSC is accurate and complete, and that a unique identification number is assigned to each PSC, which will be similar to NIN or BVN. This will enable the CAC to know persons who are PSCs in more than one business organization, and dispense with the submission of PSC information multiple times by a particular individual, who is an existing PSC on the Register. The unique identification number should also be linked to the PSC's NIN and/or BVN, for further authentication.