FACT-SHEET ON BENEFICIAL OWNERSHIP IN NIGERIA

Introduction and Context

Beneficial Ownership disclosure is a growing interest across local and international scenes for corporate beneficial ownership information disclosure. This interest, beyond seeking to expose conflict of interests among public office holders otherwise known as Politically Exposed Persons (PEPs), derives from the need to trace criminals who hide their identities behind corporate structures to defraud countries through corruption, tax evasion, undue favouritism, money laundering and illicit financial flows. The unprecedented revelations in the #PanamaPapers involving many politicians around the world and Nigeria, with offshore companies in tax havens have reinforced “global attention on the potential and real dangers of anonymous companies”. This relatively new concept aims at driving corporate business transparency and accountability. Contemporary beneficial ownership prominence is derived from the Financial Action Task Force (FATF)’s efforts at promoting policies and standards that stresses the establishment of a publicly accessible central register for warehousing personal information of natural persons that own, control and benefit from corporate entities - except for what is ordinarily withheld from public view. This factsheet locates the issues in beneficial ownership discourse and the potential for its implementation to the point of international best practices in Nigeria.

Conceptual Clarifications

The Black’s Law Dictionary defines Beneficial ownership 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 (FATF) defines a Beneficial Owner as the “natural person(s) who ultimately owns or controls a customer 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.” Transparency International (TI) defines a Beneficial Owner as “the natural person who ultimately owns, controls, or benefits from a company or trust fund and the income it generates.”

Why Beneficial Ownership Matters:

➢ Corporate businesses play important roles in global economic development but they have also tainted and abused this stance for illicit reasons ranging from money laundering, trade and transfer mis-pricing, tax evasion, bribing and corruption.

➢ Politically exposed persons (PEPs) deliberately create network of companies to hide their identities to conceal corruptly acquired wealth which further increases the risks of corruption in non-fortified economies. e.g The Malabu Oil Scandal involving the award of
Nigeria’s richest oil bloc (OPL 245) by a sitting Minister of Petroleum Resources to a company belonging to him and his associates, at a grossly undervalued fee because the actual company ownership was not disclosed.

- It serves as a tool for strengthening the fight against illicit wealth, tax evasion, conflict of interest, money laundering and terrorism financing.
- It reinforces G20 recommendation to countries to “assess the existing and emerging risk associated with different types of persons and arrangements” to be addressed from both domestic and global perspectives.
- It is essential for good governance and reforms that are capable of improving business climate. Having lagged behind on all indices for measuring growth and development for too long due to institutional dysfunctions and massive looting.
- To provide a level playing field for businesses, reduce corruption, increase revenue generation, lift the veil of obscurity that clogs accountability chain.
- Identify avoidable risks and potential investment liabilities, strengthen regulations and law enforcement.
- To rebuild confidence of foreign investors and improve Nigeria’s reputation as a reference point for transparency and accountability in business.

The State of Play: Old and New Regimes

Beneficial ownership discourse and implementation in Nigeria can be categorized into old and new regimes.

OLD REGIME OF BENEFICIARY OWNERSHIP IN NIGERIA

- The old regime represents a largely vague arrangement where its closest reference is contained in the Section 93(2) of the Companies and Allied Matters Act (CAMA), and CAP P4, Laws of the Federation of Nigeria 2004.
- The emphasis is on beneficial interest in shares located in Sections 93 and 92(1) of CAMA.
- The company(ies) is obligated to disclose by substantial shareholder in public company within 14 days of receiving the information of beneficial owner, disclose same to the Corporate Affairs Commission (CAC) (see Section 92(2) and 92[3]).

NEW REGIME OF BENEFICIARY OWNERSHIP IN NIGERIA

- The first effort at implementing beneficial ownership in Nigeria in the new regime was the NEITI pilot along with other 11 EITI implementing countries which resulted in the adoption of Section 2.5 of the 2016 EITI standard, this requires governments of implementing countries to request extractive companies to provide beneficial ownership information in their EITI audit reports by 2020, starting with the development of a roadmap for that implementation effective January 2017.
- President Muhammadu Buhari’s declaration in a statement at the 2016 London Anti-Corruption Summit convened by the UK Government that “Nigeria is committed to establishing a public central register of companies beneficial ownership information.”
OLD REGIME OF BENEFICIARY OWNERSHIP IN NIGERIA

✧ It has a very weak provision for punishing offenders as seen in the extract below “Any deliberate act of false declaration of information by a member/substantial shareholder of a company is considered an offence liable for six months imprisonment and/or N50,000.00, while default by any person or company in payment shall be liable to N200 and/or N500 respectively for every day such default in payment continues (Section 93(6), and Money Laundering Prohibition and (Repeal) Act, 2016

✧ The provisions made by the old regime on beneficial ownership do not respond to the dynamics and challenges of Nigeria, let alone meet international standards and practice.

✧ The sheer absence of record of enforcement of the ridiculous penalties for defaults in the law suggests that “the zeal to enforce compliance is eroded by the relatively weak sanctions regime.”

✧ Beneficial ownership provisions and its (non)implementation under the old regime entrench the absence of integrity in governance.

NEW REGIME OF BENEFICIARY OWNERSHIP IN NIGERIA

✧ The statement also expressed Nigeria’s intention to “implement the principles of Open Government Partnership (OGP) and Open Data standard.” Nigeria joined OGP as the 70th member and produced a National Action Plan (NAP) of 14 commitments approved for implementation at the Global Summit in Paris (France) in December 2016.

✧ Nigeria is using OGP as the platform for pushing the implementation of beneficial ownership, on an expanded and more comprehensive scale envisioned by FATF, Transparency International and other advocates.

✧ In a multi-stakeholder sense, the approach has spurred active representations across relevant government, civil society and business. Deriving from its direct mandate,

✧ The Corporate Affairs Commission (CAC) is saddled with the responsibility of leading engagement on beneficial ownership with NEITI complementing for obvious reasons.

✧ The engagement has identified the need to pool together ongoing isolated cases of programming on beneficial ownership across public institutions.

✧ Benchmarking the level of such ownership at 25% or even CAMA’s 5% has been flagged for review as the concern with the experience with oil and gas sector where a fraction as little as 1% ownership is huge enough to constitute a significant hide-away of illicit wealth.

✧ OGP platform is taking advantage of ongoing efforts at amending the Company and Allied Matters Act (CAMA), with stakeholders’ inputs for consideration and passage by the National Assembly

✧ CAC has been selected to host the disclosure register, for centrality of information and mitigate unintended cost of hosting two registers for extractive companies and another for non-extractive companies.
Perceived challenges to achieving Beneficial Ownership disclosure

The success of beneficial ownership disclosure will not be dependent on the absence of challenges, but on how the country converts those challenges to opportunities:

- Resistance to passage of a comprehensive legal framework of implementation
- Budgetary implications of establishing, verifying and ensuring compliance
- Right to personal data protection/safeguards from political witch-hunting
- Resolution of grey/knotty issue about materiality threshold
- Resolution of knotty issues around scope (CAMA’s 5%, MLPP Repeal Bill 2016’s 25% and NEITI’s 100% for oil and gas and seeming ‘silence’ on solid minerals).
- Political elites who, for selfish personal interests, may pose a stumbling block to efforts to secure a law for beneficial ownership implementation in Nigeria as some of them already mentioned in the #PanamaPapers.

Conclusion

Beneficial ownership information disclosure is a global idea and harmattan fire whose time has come. It is commendable that Nigeria has taken its seat in the moving train, relying on the OGP platform to coordinate its implementation. It is expected to boost Nigeria’s economy and strengthen its integrity and reputation by pro-actively dealing with perceived challenges.

Critical next steps

- Continued collaboration across government institutions (OGP Secretariat, CAC, NEITI, Bureau of Public Procurement, etc) and multi-stakeholders (government, civil society and businesses).
- Deriving from the experiences of countries currently implementing beneficial ownership.

- Investment should be made in developing capacity across board for template design, information collection and storage, verification of compliance.
- There should be wider consultations and consensus/synergy and build capacity
- Enforcement of sanctions where rules of the game are violated.
- The civil society must be at the centre of planning and implementation of this to prevent marginalization.
- The Presidency should consider the option of a Presidential Executive Order to move it off ground.
- Policy/requirements for participation in government’s contracts and licenses should include beneficial ownership information disclosure
- Push for a sustained engagement with organized private sector - working through the Nigeria Economic Summit Group (NESG).
- Strategically too, the government should consider deploying necessary incentives to encourage and secure buy-in and compliance by companies.
- Integrating lessons from the visit by a study team from Nigeria (comprising OGP Secretariat at the Federal Ministry of Justice (FMoJ), Nigeria Extractive Industries Transparency Initiative (NEITI), Corporate Affairs Commission (CAC) and IBFL Global) to the UK Government’s beneficial ownership implementation system.

About CISLAC

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