



**PERSONS WITH SIGNIFICANT CONTROL:  
DISCLOSURE REQUIREMENTS UNDER THE  
COMPANIES AND ALLIED MATTERS ACT 2020 AND  
PERSONS WITH SIGNIFICANT CONTROL REGULATIONS, 2022**



## Introduction

In the realm of corporate governance and transparency, the concept of beneficial ownership and the disclosure of Persons with Significant Control (PSC) holds immense importance. On 25 May 2023, Nigeria in its commitment to combat corruption and promote accountability, established the Open Central Register of Beneficial Ownership (PSC Register) to unveil individuals with significant control over corporate entities. The disclosure of the PSCs by a Company is a subject which has gained the attention of the public where it was noticed that some persons hide behind the corporate veil of corporate entities to perpetuate financial crimes. This has necessitated the need for the corporate veil to be lifted so that persons who are beneficial owners of shares or voting rights in a company can be known to the general public as well as law enforcement agencies to promote compliance and help achieve the ultimate aim of greater corporate accountability.

This briefing-note examines the legal journey which the foregoing has taken in the Nigerian law.

## Companies and Allied Matters Act (CAMA) 2020

**S119 of CAMA** obligates all companies (private and public companies) and limited liability partnerships, to disclose persons with significant control over a company. CAMA states that a person with significant control over a company shall within seven (7) days of becoming such a person disclose this information to the company; thereafter, the company shall within a month of receipt of this information notify the Corporate Affairs Commission (CAC or the Commission) who shall in turn record the given information in the register of persons with significant control. The CAMA has also provided that the company notifies the Commission of persons with significant control over a company in every annual return, in respect of the year for which the return is made.

**S120 of CAMA** further provides that in public companies, a substantial shareholder shall give notice in writing to the company stating his name, address and full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

**S120(2)** further defines a substantial shareholder as a person who holds himself or by his nominee, shares in the company which entitle him to exercise at least 5% of the unrestricted voting rights at any general meeting of the company. The company shall in turn give notice in writing to the Commission of this fact.

S868 CAMA defines the criteria of becoming a Person with Significant Control to mean any person—

- a) directly or indirectly holding at least 5% of the shares or interest in a company or limited liability partnership;
- b) directly or indirectly holding at least 5% of the voting rights in a company or limited liability partnership;
- c) directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership;
- d) otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or
- e) having the right to exercise, or actually exercising 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.

## Persons with Significant Control Regulations 2022

In recent times, the Commission has partnered with other government agencies and departments to curb terrorism financing and money laundering as well as assisting Nigeria to adhere to its international obligations under the Financial Action Task Force (FATF).

On 23rd November 2022, the Minister of Industry, Trade and Investment approved the Persons with Significant Control Regulations, 2022 (the "PSC Regulations or the Regulation") in exercise of the Commission's power under **section 867** of the Companies and Allied Matters Act, 2020 ("CAMA")

The PSC Regulations defines a person in relation to Person with Significant Control (PSC) as a natural person.

Furthermore, the Regulations defined PSCs to be beneficial owners who are ultimately the natural persons who own or control 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. In addition to this definition, it adopted the criteria to be persons with significant control under **S868 CAMA**. Thus, where a corporate entity holds at least 5% of shares or voting rights in another company, the reporting entity is required to disclose itself and must provide details of the individuals who are the ultimate beneficial owners of the company, for which it is holding such shares or voting rights.

The Regulations, in addition to the entities provided for under the CAMA (private companies, public companies and limited liability partnership), included other entities such as foreign exempted companies, foreign-exempted limited LLPs, and government owned companies as also being subject to the Regulations.

## Natural Persons v. Corporate Persons as persons with significant control

The criteria to qualify as a PSC under **s868 CAMA** relates to "any person". CAMA further defines a 'person' to include an individual, company, or other entity, which has legal rights and is subject to obligations. This definition suggests that a person having significant control over a company may be a corporate entity.

Contrary to the foregoing definition of CAMA which suggests that a person with significant control may be a corporate entity. The Regulations define a person with significant control as a "natural person" without more!

This definition of the Regulations raises potential legal arguments as to whether the Regulations can limit the definition of a person as defined by CAMA which is the substantive statute. A potential counter argument is that the definition of "person" as contemplated by CAMA relates to use of "person" as general and not a specific definition in relation to who a "person" should be when dealing with PSC as contemplated by the Regulations.

Pending the decision of the courts as to whether a “person” is a natural person to the exclusion of a “corporate entity”, it may be useful for companies to adopt a risk mitigation approach by complying with the provisions of the Regulations with respect to the limitation of the definition of a “person” to a natural person.

## Notice to Disclose

**Regulation 6** of the PSC Regulations provides that notice to disclose must be served by a company to a person where it has reasonable cause to believe that such a person is its PSC and require such person to provide the particulars set out in the PSC Regulations. The recipient of the notice is expected to provide the required information within 7 (seven) days of the receipt of such notice. Upon non-compliance with the notice, a warning notice is to be issued and afterwards, restrict the relevant interest of a person where the person has not complied with the warning notice within seven days from the date of the notice.

The Regulation enumerates the different information to be received from persons with significant control of the different entities subject to the Regulation; it includes the particulars listed in **Regulation 4** of the PSC Regulations, against the name of each member that qualifies as a PSC in the register of members.

## Availability of PSC Information to the Public

**Regulation 9** provides that information as regards the Persons with Significant Control shall be available to the public through the Beneficial Owners Register ([bor.cac.gov.ng](http://bor.cac.gov.ng)) at no cost subject to the provision of **Regulation 17** of the **Companies Regulation 2021** on Restriction of Protected and Personal Information. From a data protection perspective, Regulation 17 weakly provides some protection of personal data under limited circumstances as follows: (i) where there is a threat to life, (ii) where the data subject is a target of extremists, (iii) where the data subject is active (by way of being a participant or supplier) in the defence industry or law enforcement agency (iv) where the data subject has diplomatic status (v) where the data subject is a person of international repute and restrict is necessary for public interest and safety (vi) where the data subject would be compromised in safety. In addition to the above-mentioned instances, the data subject must provide sufficient evidence to show that he or she falls within the above-mentioned categories of data subject.

## Sanctions for Non - Compliance

**Regulation 12** imposes sanctions on both the company and every officer of the company where it defaults in complying with the reporting requirements in respect of the PSC register; also, where a person with significant control defaults in complying with reporting requirements in respect of sections 119(1) and 791(1) of CAMA, the person that is in default shall be liable to pay to the Commission administrative penalties. In addition to the foregoing, the PSC Regulations also provides that a company’s status shall be reflected as “inactive” where such company have failed to comply with the directives of the Commission to file notice of changes within seven days.

## Timeline for Compliance

Immediate! The Commission has commenced enforcement of the provisions of CAMA as it relates to PSC and the Regulations.

## Conclusion

The objective of the PSC Regulations is to provide a framework and procedure for obtaining and reporting relevant information on persons with significant control or beneficial owners of a limited liability company, limited liability partnership (LLP), foreign-exempted companies, foreign-exempted limited LLPs, and government-owned companies.

The PSC Regulations appears to have gone beyond the provisions of CAMA to disclose Persons with Significant Control and holders of substantial shares or their nominees (for public companies) to lifting the veil to disclose the beneficial owners of interest where the PSCs or holders of substantial shares are corporate entities. Pending judicial decision to the contrary, we suggest that companies comply with CAMA and Regulations with respect to declaration of PSC.

# Key Contacts



**Oyeyemi Oke**

oyeyemi.oke@firstfiduciary.ng



**Frances Nwakobi-Onuigbo**

frances.nwakobi@firstfiduciary.ng



**Prima Onukwu**

prima.onukwu@firstfiduciary.ng



**Elizabeth Adedayo**

elizabeth.adedayo@firstfiduciary.ng

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## LAGOS

3A Kayode Otitoju Street,  
Off Admiralty Road, Lekki Phase 1  
Lagos, Nigeria.

+234 906 768 6317  
contact@firstfiduciary.ng

## ABUJA

47B, Kumasi Crescent,  
Wuse II, Abuja. iCentra

