UNVEILING THE PERSONS WITH SIGNIFICANT CONTROL REGISTER: A COLOSSAL LEAP FOR TRANSPARENCY AND CORPORATE GOVERNANCE IN NIGERIA

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INTRODUCTION

The Corporate Affairs Commission (CAC) launched the Persons with Significant Control Register (PSCR), also known as the Open Central Register of Beneficial Ownership, on Thursday, 25th May 2023. This launch fulfils section 10 of the Persons with Significant Control Regulations 2022, which mandates the CAC to freely provide the public with information from the central register about individuals who hold significant control over companies.

This launch ends more than seven years of wait to make the information and data of persons with significant control of companies in Nigeria open to the public. Additionally, Nigeria becomes the first African country to collect and share beneficial ownership information and data of companies in accordance with global open ownership data standards.

This article explores the launch of Nigeria's PSCR by the CAC. It delves into the purpose of the register, its role in combating corruption, promoting transparency, and supporting accountability in corporate governance. The article also highlights compliance requirements, available information on the register, and potential sanctions for non-compliance, providing a comprehensive overview of the significance and impact of the PSCR.

BACKGROUND AND PURPOSE OF THE REGISTER

The concept of persons with significant control (PSC) in Nigeria was ushered in through the introduction of the Companies and Matters Allied Matters Act (CAMA) 2020 and the subsequent implementation of the PSC Regulations 2022. The establishment of the open

registrar signifies a progressive stride towards enhancing transparency and accountability in corporate governance within Nigeria. As companies and Limited Liability Partnerships (LLP) are mandated to disclose information concerning their beneficial owners and individuals exerting significant control over companies and LLPs.

The PSC Register serves as an accessible online platform that publicly discloses the accurate ownership and control details of companies and LLPs in Nigeria. Through this register, individuals can effortlessly determine the ownership structure of Nigerian companies and LLPs.

The public has free and unrestricted access to the PSC Register. Anyone can conduct an online search on the register by utilizing various search criteria, including the company or LLP name, registration number, or the full name of the PSC. Users of the Register may report any incorrect or inconsistent information about a PSC observed in the Register to the Commission by clicking on the Report interface on the Register.

This PSCR serves as a critical tool in the fight against corruption, illicit financial activities, and various forms of criminal behaviour that may be concealed within companies and LLPs. Furthermore, the register plays a vital role in fostering transparency in business operations across Nigeria. The PSC Register strengthens the fight against corruption and promotes transparency by facilitating investigations by law enforcement and regulatory agencies, supporting Civil Society Organizations in promoting public accountability, and empowering the media as societal watchdogs.

DEFINITION OF PERSONS WITH SIGNIFICANT CONTROL

The establishment of the PSC Register is in compliance with Section 119 - 123 of the CAMA 2020.

A PSC has the same meaning as a beneficial owner, which is the natural person who ultimately owns or controls a Company or LLP or the natural person on whose behalf a transaction is being conducted. These include those natural persons who exercise ultimate effective control over a legal person or arrangement.

Significant control includes the following direct or indirect acts:

a. a direct or indirect holding of at least 5% of the issued shares, interests or voting rights in a Company or an LLP;
b. the direct or indirect right to remove or appoint a majority of directors of the Company or partners of an LLP; and
c. the direct or indirect exercise of significant influence or control over a Company or LLP.

COMPLIANCE REQUIREMENTS

The PSC is required to submit particulars of the control (or any change in particulars of the control) to the Company or LLP in writing not later than

seven days after becoming a PSC or after any change in particulars of the control. The Company or LLP is required to notify CAC of the information (or any change in the information) received from the PSC not later than one month after receipt of the information.

The mode of notification to CAC is electronic and it is through the Company Registration Portal (CRP). PSC information is notified to CAC either at incorporation, at the occurrence of any change in the particulars of control, or at the filing of annual returns.

Where the PSC is a State-Owned Entity (SOE), the information to be submitted to the CAC includes the same information of the Chief Executive Officer (CEO) of the SOE as is required of an individual who is a PSC.

Disclosure is required where the person is a Politically Exposed Person. This is a person who has been entrusted with a prominent public position as well as his or her family members and close associates.

Companies are also required to file annual returns with the CAC, which must include a declaration of compliance with the Nigerian PSC Regulation 2022. The declaration must confirm that the company has maintained a register of its beneficial owners and those with significant control over the company and that the information contained in the register is accurate and up-to-date.

INFORMATION AVAILABLE ON THE PERSONS WITH SIGNIFICANT CONTROL REGISTER (OPEN CENTRAL REGISTER OF BENEFICIAL OWNERSHIP)

The following information is available on the PSCR –

a. full name of PSC;
b. date on which the reportable ownership or control started;
c. date of declaration of significant influence or control;
d. occupation;
e. service address;
f. nationality;
g. nature of ownership or control in the company or limited liability partnership; and
h. unique identifier.
i. The CAC through the PSCR also makes freely available to the public the following information from the central register on each reporting entity –
   (a) company or limited liability partnership name;
   (b) company or limited liability partnership registration number;
   (c) status;
   (d) number of PSCs and relevant particulars; and
   (e) country of registration.

SANCTIONS AND PENALTIES FOR NON - COMPLIANCE

The CAC sanctions non-submission, late submission or false statements in PSC information. The penalties are as follows:

I. Daily monetary penalty against the PSC after the seven days' timeline for submission of the information to the Company or LLP.
II. Restriction on the relevant interest of the PSC.
III. Imprisonment for two years for non-submission of the information by the PSC to the Company or LLP.
IV. Daily monetary sanctions against the Company or LLP and each officer of the Company or LLP after the one-month timeline for submission of the information to the CAC.
V. Reflection of the status of the Company or LLP as "INACTIVE" on the PSC Register and other relevant online portals of the Commission.
VI. Refusal to process any post-registration application submitted by the Company or LLP.
VII. Refusal to issue a "Letter of Good Standing" to the Company or LLP.
VIII. In the case of false statements to the Commission, two years imprisonment against any officer of the Company or LLP so convicted.

CONCLUSION

The launch of the PSCR by the CAC marks a significant milestone in promoting transparency, combating corruption, and ensuring accountability in Nigeria's corporate sector. The PSCR, in accordance with Regulation 10 of the Persons with Significant Control Regulations 2022, provides open access to information on the true ownership and control of companies and LLPs.

The initiative not only ends the years-long wait for public disclosure but also positions Nigeria as a pioneer in collecting and sharing beneficial ownership data in alignment with global standards. By facilitating investigations, empowering civil society organizations, and enabling the media to act as watchdogs, the PSCR contributes to the ongoing fight against corruption and supports the nation's development goals.

Compliance requirements, sanctions for non-compliance, and the availability of detailed information on the PSCR further strengthen its effectiveness in promoting transparency and holding entities accountable.

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