

Mandatory Disclosure of Persons Holding Significant Control in Nigeria's Oil and Gas Sector - **Have You Complied?**

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) has by a directive tagged "Notification No. 1 to All Licence and Lease Holders in Nigeria on the Requirement for Submission of Beneficial Ownership Information" mandated all entities that apply for or hold a participating interest in an exploration or production oil and gas licence, lease or contract to provide information of their owners.

The Nigeria Extractive Industry Transparency Initiative (NEITI) recently reported that Nigeria and other developing countries record losses in the region of \$1 trillion yearly due to secret ownership of companies, especially in the extractive industry. It therefore becomes significant to disclose beneficial interests in such entities, even where such interests are held through nominal holders or in trust for the attainment of increased



Picture: Tank farm in Lagos Nigeria

transparency and to combat asset shielding.

It is on this premise that the directive which was released on the 26th of December 2022 and signed by its Chief Executive, Mr Gbenga Komolafe, mandated all concerned entities to disclose the following:

1. The identity(ies) of beneficial owner(s); and
2. the level of ownership; and
3. details about how control is exerted; about persons who in line with Sections 119 and 120 of the Companies and Allied Matters Act 2020, fit into the underlisted categories:

- persons directly or indirectly holding at least 5% of the shares or interest in a relevant person;
- persons directly or indirectly holding at least 5% of the voting rights in a relevant person;
- persons directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a relevant person;
- persons otherwise having the right to exercise or actually exercising significant influence or control over a relevant person; or

Mandatory Disclosure of Persons Holding Significant Control in Nigeria's Oil and Gas Sector - Have You Complied? – Cont'd

....Continued from page 1

- persons 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 above if it were an individual.

To comply, concerned entities are to fill and submit to the Commission a Beneficial Ownership Declaration Form within 7 days from the date of the release of the said directive. Furthermore, notice of change in persons in significant control over a relevant person shall be provided by the relevant person within 30 days of the change using the Change in Beneficial Ownership Declaration Form.

It is equally important to note that all potential investors in the industry will now be mandatorily required to submit the form alongside other application documents in order to be eligible for the grant/award of the licence, lease and contract as the case may be. Though the initiative was to take advantage of the amendment to the Companies and Allied Matters Act (CAMA), it is a slight deviation from and an additional provision to the latter whose requirements are to the effect that such persons should notify the company within 7 days of assumption of control and the company subsequently notifying the Corporate Affairs Commission (CAC) within 30 days therefrom.

Also under CAMA, notification of any change (assumption/cessation) in substantial holding are to be made to the (CAC) within 14 days of such.

Be as it may, It is hoped that the mandatory disclosures will serve the desired purpose of ensuring that the industry operates in line with international best practices and is geared towards transparency and accountability, the attainment of the SDGs (with particular emphasis on poverty reduction and national development support), and curb money-laundering/corruption.

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