

BANKI
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KENYA



CENTRAL
BANK OF
KENYA

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October 5, 2023

PAYMENTS CIRCULAR NO. 9 OF 2023

TO ALL CHIEF EXECUTIVE OFFICERS OF PAYMENT SERVICE PROVIDERS GUIDANCE ON OBLIGATIONS OF REPORTING INSTITUTIONS (REGULATED AND SUPERVISED BY THE CBK) TO IDENTIFY AND VERIFY THE IDENTITY OF BENEFICIAL OWNERS OF LEGAL PERSONS AND ARRANGEMENTS

1.0 BACKGROUND

Kenya went through a mutual evaluation of its anti-money laundering and combating of terrorism financing and countering proliferation financing (AML/CFT/CPF) regime by the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) from October 2021 to July 2022. The mutual evaluation report (MER) for Kenya was adopted by the ESAAMLG at its plenary meeting in Livingstone, Zambia and published in September 2022. Post mutual evaluation, Kenya was referred to the Financial Action Taskforce's (FATF) International Cooperative Review Group (ICRG) process due to adverse results in its mutual evaluation. The country is currently under a period of observation for one year from October 2022 to October 2023, during which time Kenya is required to take action to address deficiencies and Recommended Actions noted in the MER.

The Report noted a number of deficiencies in the AML/CFT/CPF legal and regulatory frameworks. It further noted a number of deficiencies relating to AML/CFT/CPF preventive measures, which financial institutions are required to address. In particular, the MER noted deficiencies relating to the obligation of financial institutions to identify beneficial owners (BOs) of legal persons and legal arrangements and to verify the identity of BOs using reliable information or data. Some of the deficiencies on BO noted in the MER are:

- i) Kenya still permits nominee shareholders and directors and this poses a high vulnerability if such nominees are not required to disclose their nominators.
- ii) There is no requirement in law for financial institutions to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner.
- iii) There are no requirements in law for financial institutions to understand the ownership and control structure of a company.
- iv) Financial institutions do not have a good understanding of BOs and ML risks posed by BOs. They also do not understand their AML/CFT obligations relating to BOs. Some financial institutions treat directors and shareholders as BOs, when this is not always the case.
- v) Financial institutions do not identify the beneficial owners and they do not take reasonable measures to verify the identity of the beneficial owners. They also fail to identify politically exposed persons (PEPs) who are BOs.
- vi) Existing training programmes in financial institutions do not adequately cover BO.
- vii) Financial institutions which use agents/third parties do not identify and verify BOs of the agents/third parties.

Attached hereto as **Annex I** is a list of deficiencies on BO as noted in the MER. Reporting institutions regulated and supervised by the CBK (Reporting Institutions) should however read the entire Report and identify other deficiencies on BO noted therein.

The MER recommended that legal reforms be carried out to address gaps relating to BO. The Report further recommended that authorities including the CBK should provide adequate guidance to reporting institutions specifically on CDD and record keeping obligations including, the identification and verification of BO information.

2.0 AMENDMENTS INTRODUCED BY THE AML/CFT (AMENDMENT) ACT ON BO INFORMATION

The AML/CFT (Amendment) Act, 2023, which came into force on September 1, 2023, has amended the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) by imposing an obligation on all reporting institutions (financial institutions included) to:

- i) identify and verify any applicant seeking to enter into a business relationship with them or to carry out a transaction or series of transactions with them.
- ii) identify and verify a customer whether permanent or occasional, by taking reasonable measures to establish the true identity of that person by requiring the applicant or customer to produce an official record reasonably capable of establishing the true identity of the applicant or customer.
- iii) identify and verify the identity of natural persons who are beneficial owners of legal persons or arrangements.

The Central Bank of Kenya (CBK) Act, Banking Act, Microfinance Act and National Payment System Act have also been amended by defining a “significant shareholder” to include a beneficial owner. These four statutes have further been amended to provide for the definition of “beneficial owner” as follows:

“the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement”.

The AML/CFT (Amendment) Act, 2023 has addressed the legal gaps relating to BO. Reporting institutions should obtain a copy of the AML/CFT (Amendment) Act, 2023 for their ease of reference on these and other critical amendments relating to AML/CFT/CPF obligations of financial institutions.

3.0 GUIDANCE ON IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERS OF LEGAL PERSONS AND ARRANGEMENTS

Given the new requirements in POCAMLA, CBK Act, Banking Act, Microfinance Act, and National Payment Act relating to beneficial ownership, CBK now guides as follows:

1. Reporting institutions should take note of the different elements of a beneficial owner as outlined in the definition of the term. These are:
 - i) the natural person who ultimately owns a legal person or arrangement (trust and partnerships).
 - ii) the natural person who ultimately controls a legal person or arrangements.
 - iii) the natural person on whose behalf a transaction is conducted.
2. Reporting institutions should at all times take measures to identify the natural person who is the ultimate beneficial owner of an applicant or customer which is a legal person or legal arrangement.
3. Reporting institutions should at all times take measures to independently verify the identity of the natural person who is the ultimate beneficial owner of an applicant or customer which is a legal person or legal arrangement, using relevant information or data obtained from reliable sources.
4. Reporting institutions should maintain up to date records of BO information of their shareholders.

The detailed Guidance Note is attached hereto as **Annex I**.

4.0 PURPOSE OF THE CIRCULAR

The purpose of the Circular is to:

1. Guide reporting institutions on their AML/CFT/CPF obligations to identify and independently verify the identity of beneficial owners of legal persons and arrangements.
2. Require all reporting institutions regulated and supervised by the CBK to submit to the CBK, the following:
 - i) Amended policies and procedures comprehensively capturing AML/CFT/CPF obligations on BO, by December 31, 2023.
 - ii) A report on the updated records of beneficial ownership, by December 31, 2023.
 - iii) A report on how the MER deficiencies on BO requirements have been addressed, by November 30, 2023.

Yours faithfully,



MICHAEL EGANZA
DIRECTOR, BANKING AND PAYMENT SERVICES DEPARTMENT

Attachment

CENTRAL BANK OF KENYA GUIDANCE TO REPORTING INSTITUTIONS (REGULATED AND SUPERVISED BY THE CBK) ON THE IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERS OF LEGAL PERSONS AND ARRANGEMENTS

1.0 DEFICIENCIES NOTED IN THE MUTUAL EVALUATION REPORT RELATING TO BENEFICIAL OWNERSHIP REQUIREMENTS.

Some of the deficiencies noted in the mutual evaluation report (MER) for Kenya include the following:

- i) Kenya still permits nominee shareholders and directors and this poses a high vulnerability if such nominees are not required to disclose their nominators.
- ii) There is no requirement in law for financial institutions to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner.
- iii) There are no requirements in law for financial institutions to understand the ownership and control structure of a company.
- iv) There is no requirement in law for financial institutions to determine who are the natural persons that ultimately own or control the customer who is a legal person or legal arrangement.
- v) There is no requirement in law to verify the identity of the beneficial owner before establishing a business relationship or conducting transactions for occasional customers.
- vi) Commercial banks and microfinance banks do not have a good understanding of BOs and ML risks posed by BOs. They also do not understand their AML/CFT obligations relating to BOs.
- vii) Some financial institutions maintain that directors and shareholders are normally the BOs. They end up implementing the BO requirements to a limited extent.
- viii) Many non-bank financial institutions (NBFIs), especially mobile money service providers (MMSPs) could not demonstrate that they identify and verify the BOs of their agents/third parties.
- ix) Financial institutions do not take reasonable measures in determining whether the beneficiaries and/or the beneficial owner of the beneficiary, are PEPs in relation to life insurance policies.
- x) There is limited identification of PEPs that are BOs, and hence application of EDD is less effective in this area.
- xi) Systems and measures to determine whether a customer or BO is a politically exposed person (PEP) are not effective.
- xii) The implementation shortcomings relating to BO verification and PEPs create significant vulnerabilities that affect all sectors including the banking sector.
- xiii) Some NBFIs rely on CR12 (list of shareholders)) as a source of information for identifying the BO, which may not always be the same as BOs.
- xiv) Given the limited understanding by most of the medium to large non-bank financial institutions on certain AML/CFT obligations such as on BO, it was determined that the training programmes for NBFIs in place are not effective in this area.
- xv) Financial institutions have challenges verifying BO information as they have no access to reliable independent databases.

The MER recommended that legal reforms be carried out to address gaps relating to BO. The Report further recommended that authorities including the CBK should provide adequate guidance to reporting institutions specifically on CDD and record keeping obligations including, the identification and verification of BO information. The legal gaps on BO have already been addressed through the AML/CFT (Amendment) Act, 2023.

2.0 GUIDANCE ON IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERS OF LEGAL PERSONS AND ARRANGEMENTS

Given the new requirements in POCAMLA, CBK Act, Banking Act, Microfinance Act, and National Payment Act relating to beneficial ownership, CBK now guides as follows:

1. Reporting institutions regulated and supervised by the CBK (reporting institutions) should take note of the different elements of a beneficial owner as outlined in the definition of the term. These are:
 - i) the natural person who ultimately owns a legal person or arrangement.
 - ii) the natural person who ultimately controls a legal person or arrangements.
 - iii) the natural person on whose behalf a transaction is conducted.
2. Legal arrangements are trusts and partnerships. The term may also apply to other unincorporated entities.
3. Reporting institutions should amend their policies and procedures to provide a robust framework for identifying and verifying the identity of a beneficial owner. Amended policies and procedures should be submitted to the CBK by December 31, 2023.
4. Reporting institutions should at all times take measures to identify the natural person who is the ultimate beneficial owner of an applicant or customer which is a legal person or legal arrangement.
5. Reporting institutions should at all times take measures to independently verify the identity of the natural person who is the ultimate beneficial owner of an applicant or customer which is a legal person or legal arrangement, using relevant information or data obtained from reliable sources.
6. Reporting institutions should establish frameworks or mechanisms to identify independent and reliable sources from which relevant and credible information or data can be obtained for purposes of verifying the identity of a beneficial owner. These sources may include Business Registration Services (BRS), Kenya Revenue Authority (KRA), Land Registries, other public sources/records, financial audit reports and other sources known or considered credible by a reporting institution.
7. In nominee directorship arrangements, the substantive director is the beneficial owner as he/she is the natural person ultimately controlling the legal person or arrangement. Reporting institution should establish whether such nominee arrangements exist.
8. Reporting institutions should keep up to date beneficial ownership information of their customers and their own shareholders.
9. Reporting institutions should submit to the CBK annually full and current beneficial ownership of their shareholders, together with their respective shareholdings. The list should be up-dated as and when there is a change in beneficial ownership information and the same should be submitted to the CBK within thirty days from the date of change. Financial institutions which are listed companies in the Nairobi Securities

- Exchange (NSE) or in a foreign Stock/Securities Exchange need only submit beneficial ownership information annually and as and when requested by the CBK.
10. Beneficial owners who hold or seek to hold significant shareholdings in reporting institutions shall be vetted by the CBK.
 11. In directorship nominee arrangements, both the nominee director and the substantive director shall be vetted by CBK prior to appointment as such.
 12. Reporting institutions should check and identify from the current customer records, those natural persons who are beneficial owners of customers who are legal persons or arrangements. Reporting institutions should immediately take steps to verify the identity of beneficial owners whose identity has not been verified before or whose identification/verification details may be outdated. Records of beneficial ownership information should be updated within three months from the date of this circular and a report to that effort to be submitted to the CBK on or before December 31, 2023.
 13. Reporting institutions should take immediate steps to address all deficiencies noted in the MER relating to beneficial ownership information. Some of the deficiencies are outlined in Clause 1.0 above. A report on how these deficiencies have been addressed should be submitted to the CBK by November 30, 2023.
 14. Reporting institutions should revise their training programmes to include a comprehensive training programme/schedule that covers BO identification and verification. All relevant staff should be given training priority.
 15. Reporting institutions should ensure that the audit function extends to confirmation of whether or not the financial institutions comply with beneficial ownership identification and verification requirements of the law and approved policies. This includes identification of all BOs of legal persons and arrangements and independent verification of BO identity information.
 16. All beneficial ownership information should be kept for such period as is prescribed under the law.

**CENTRAL BANK OF KENYA
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