



# Legal Review on Beneficial Ownership in Armenia (Final)

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# 1. Executive Summary

While there is no standalone government policy on beneficial ownership in the mining sector specifically, there is a requirement in the current Mining Code that companies applying for a production licence must provide details of all entities with at least a 10% stake in the company. However, there is no requirement to go beyond this first level of ownership, such as disclosing the owners of the parent company or the ultimate beneficial owner, in line with EITI requirements. In addition, the Mining Code does not incorporate strict change of ownership reporting mechanisms, nor does the Mining Agency (within the Ministry of Energy Infrastructure and Natural Resources - MEINR) keep any registry on the beneficial owners of mining companies. The requirement to disclose any entity owning more than 10% at the company registration phase is not a detailed information requirement, nor is this information publicly available, nor does it require further disclosure of any detailed information on the owners beyond the first level of any holding in the mining company.

Armenian law nevertheless contains several examples where ultimate beneficial ownership (UBO) as well as politically exposed persons are defined, with beneficial ownership in line with Financial Action Task Force (FATF) standards. Major legislative acts which contain such regulations are mostly in the field of the financial regulation and securities markets as well as in procurement.

The concept of significant participation disclosure exists, for example such disclosure is required for the banks and relate to where there is more than 10% of direct or indirect holding, moreover the Central Bank of Armenia (CBA) is the authority regulating changes in any significant ownership in the bank. Any such change, whether direct or indirect, in any bank in Armenia is void without the prior consent of the CBA.

Comprehensive information on company beneficial ownership is maintained mostly by the banks in relation to any entity opening a bank account, as per requirements of the applicable legislation as well as by the CBA in relation to the financial institutions under its oversight and supervision. So as such there is existing practice and experience on beneficial ownership disclosure and relevant registers do exist in Armenia, although the information is not publicly available. This experience can be considered and used for the development of the legislative changes in relation to beneficial ownership disclosure in the mining sector.

As stated above there is no general and unified policy position or legislation on beneficial ownership disclosure in Armenia, with relevant provisions are contained in the following laws and legal acts:

- RA Law on the State Registration of Legal Entities, State Recording of Separate Divisions of the Legal Entities, Institutions and Individual Entrepreneurs, in force since 2001. Based on amendments approved in 2016 the requirement was introduced in relation to declaration of the beneficial owner at the stage of the registration of the legal entity having equity exceeding AMD 20,000,000. This is based on Anti-Money Laundering (AML)/PLAF<sup>1</sup> requirements and as such has purely formal meaning as there is no further verification or check of the information submitted during the

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<sup>1</sup> The acronym for the Anti-Money Laundering law in Armenian.

registration process. Information is not publicly available and kept in the files of the State Registrar;

- Financial Sector Legislation (Law on Securities Market, Law on Banks and Banking etc). Financial sector legislation in Armenia is considered one of the best. It is also implemented effectively and efficiently by the relevant regulator and licensed entities, such as banks, investment companies and depositaries etc.
- The RA Law on Combating Money Laundering and Financing Terrorism has been in force since 2008 and is based on the Financial Action Task Force (FATF) principles and requirements and contains the most developed definition of the “real person” who is the ultimate beneficial owner and incorporates the concept of direct and indirect ownership and control as well as control implemented via decision-making or appointment of the senior officers in charge of company matters as well as business transaction based interest recognition.
- The RA Mining Code, which has been in force since 2012 is mostly silent on requirements of beneficial ownership disclosure, with the only requirement relating to disclosure of the first level of owner for mining/prospecting licenses. This information is not publicly available.
- The RA Law on Procurement, enforced from year 2017 has developed the detailed provision on disclosing by the applicant for competition on procurement for state needs etc of information on person owning more than 10% as well as person, having the powers to appoint executive management of the applicant as well as person entitled to more than 15 percent of the profit/income of the applicant.
- RA Public Service Law, which is in force from year 2012 incorporated definition on public service as well as positions falling under such service and requires the public servants/officials to announce any interest they have in any commercial entity within 1 month following the appointment to the office as well as provide such interest and/or participation in the commercial entity to the trust management until being in the office.
- The RA Freedom of Information Law has been in force since 2013 and allows access to information and obliges state owned companies as well as companies receiving financing from the budget as well as companies classified as having public importance and their managers to respond to requests for information.
- The new Tax Code, which will be enforced from 2018, is yet to be tested and observed in practice. However, it includes new provisions on transfer pricing which have been non-existent in Armenia until adoption of this new code. It also contains a definition on cross-interest in companies, which fall under transfer pricing requirements and specifically sets the threshold of 20% of equity participation etc.

The key mechanism to facilitate beneficial ownership disclosure in the mining sector will be an amendment to the Mining Code, which augments existing ownership disclosure with FATF-standard UBO. New license applicants will be required to disclose their UBOs as a condition of license award, whereas existing license holders

will be granted a set period of time in which to provide this information (with sanctions for non-compliance).

In terms of a definition of beneficial ownership that will be added to the Mining Code, we therefore propose the following, which is based on a consideration of international examples, draws directly on the recent example of the Kyrgyz Republic's October 2017 amended Law on Subsoil Use and is approved by the EITI International Secretariat and based on the concepts of the beneficial ownership developed under the Armenian law up to date:

A 'beneficial owner' is the natural person(s) who directly or indirectly ultimately owns or controls the legal entity.

A politically exposed person is considered a beneficial owner irrespective of the level and extent of ownership or control.

'Ownership and control' shall mean that the individual person(s) who ultimately directly or indirectly:

- a. owns or controls alone or jointly with family members and/or affiliated persons at least 20% of shares or voting rights in the legal entity;
- b. has control of the legal entity through ownership of priority shares, preference shares and / or shares with dual or multiple voting rights;
- c. derives a substantial economic benefit from the legal entity, comprising not less than 15% of the legal entity's annual profit;
- d. holds the right to appoint or remove a majority of the directors of the legal entity;
- e. holds the right to exercise influence and control over the management and operations of the company or has the capacity to predetermine decisions through other means, including and not limited to contract, trust, management agreement, agreement on joint activities

For the purpose of applying the Code, 'politically exposed person' means an individual who are, or have been, entrusted with prominent public functions and their family members and affiliated persons.

For the purpose of the Code, the following relatives shall be considered as members of immediate family: a father, a mother, a spouse, parents-in-law, a grandmother, a grandfather, a sister, a brother, children, brother's and sister's spouses and children.

For the purpose of the Code the legal entities shall be considered affiliated if:

- a. a legal entity with the right to vote holds 20% and more of voting shares (equity, stakes, hereinafter – shares) of another entity, or by the power of participation or agreement signed between these entities is capable of predetermining the decisions of the other entity;
- b. one third of parties in the managing body of a legal entity or other parties implementing similar functions or their family members are at the same in the managing body or implement similar functions in the other body;
- c. they have been acting in accord aiming at common economic interests.

For the purpose of the Code the legal entities and physical entities shall be considered related if they have been acting in accord aimed at common economic interests or if the physical person or a member of his (her) family is:

- a. a participant holds more than 20% of shares of the legal entity;
- b. has the capacity to otherwise predetermine the decisions of the legal entity;
- c. serves as the chairman of the board, deputy chairman of the board or a member of the board, executive director or vice-director, chairman of the

directorate or a member of the directorate, chief accountant or deputy chief accountant, chairman of the audit commission or a member of the audit commission, or chairman of the inspection commission or a member of the inspection commission, or a member of other similar bodies.

This means that if a family member of a public official is the declared owner of equity in a mining project, that family member is considered a PEP. This definition will require an amendment to the Public Service Law, or to the draft Anti-Corruption Commission legislation.

There are two main options for data collection and verification:

- Option 1- A multi-sectoral approach, in line with the Financial Monitoring Centre's plans to respond to the 5<sup>th</sup> MONEYVAL assessment recommendations by upgrading existing UBO processes
- Option 2 – A sector-specific approach, with onus on the Mining Agency within the MEINR to verify data.

The advantage of the multi-sectoral approach is that it will be deemed fair to all sectors, rather than give the appearance of targeting one sector (and likely face lobbying resistance in parliament). In addition, this approach draws on the capacity and expertise regarding beneficial ownership that already exists within the CBA. However, the major disadvantage is time: would a multi-sectoral approach fit within the January 1<sup>st</sup> 2020 deadlines. An additional disadvantage is that current beneficial ownership practices are not based on the principle of publicly available data, and in addition, verification processes are triggered by suspicious transactions, rather than conducted at the outset.

A sector specific approach can be viewed as more controllable in terms of the EITI deadline (there are less moving parts) in short term and can be designed in terms of the key output of a publicly available beneficial ownership register. The downside is that the mining sector may lobby against a single-sector approach and claim unfair targeting. In addition, this approach may face resistance from elsewhere in government, given the existing work of the CBA and its Financial Monitoring Centre.

The sector-based approach will require that data be submitted to MEINR (as per the Mining Code amendment) *and* to the State Registry or Central Depository of Armenia as the case might be. The Ethics Committee shall also be entitled to receive information in case it falls under its competence. There shall be established rules of exchange of information between all relevant agencies and institutions via the drafting and agreement of Memoranda of Understanding.

Verification powers of each license application shall be concentrated with MEINR but other institutions shall have the obligation to cooperate with MEINR in relation to such verification.

An alternative sub-option is that the powers of the MEINR can be vested to a specialized agency (such as FMC), given their relevant experience and practice. In our opinion, this capacity can be instated and developed in MEINR or its institutions being in charge of mining sector. This may be not cost effective at the launch but it will establish a proper culture of regulation and enforcement as currently is in place with other regulators such as the Central Bank of Armenia.

Given the current stage of legislative development and institutional frameworks in Armenia and the upcoming introduction of unified business/company registry, transfer of all data to State Registrar, including and not limited to companies data as

well as databases on licenses, permits etc, we recommend the adoption of a multi-sectoral approach to the public disclosure of the ultimate beneficial owners of mining companies through development, adoption and enforcement of amendments to the Mining Code of the Republic of Armenia and vesting the State Registrar and Ministry of Energy Infrastructure and Natural Resources (MEINR) with certain verification and compliance enforcement rights. This will ensure that a public register of beneficial owners in the mining sector is ready before the EITI deadline of January 1<sup>st</sup> 2020.

### **Key timelines:**

We recommend undertaking option 2 discussed above and to be implemented based on the following schedule:

1. End of 2017: development of the definition of ultimate beneficiary owner for incorporation in the Mining Code as well as other changes relevant changes and amendments to the Mining Code based on the discussions of the findings of Legal Report with stakeholders
2. 2018: preparation of amendments to the Mining Code, with stakeholder consultation, with the goal of adoption of the amendments by end of 2018;
3. June 2019: MEINR prepares secondary legislation and establishes the public registrar for beneficial owners of the mining companies from June 2019, to ensure there is sufficient time for testing the system prior to enforcement;
4. Conduct a series of seminars, education and outreach on new legislation requirements from 2019

## 2. Introduction

The Extractive Industries Transparency Initiative (EITI) began in 2003, with twelve principles centered on the objective of increasing revenue transparency in the extractive sector. EITI was successful in gaining traction around the world and now has 53 implementing countries. As the initiative has matured, so too have the compliance requirements developed. The latest iteration of the compliance framework, the 2016 EITI Standard requires that by 1 January 2020, all implementing countries must ensure that reporting companies disclose the identity of their beneficial owners, including any Politically Exposed Persons (PEP). In advance of this deadline, the Standard also requires that implementing countries publish a beneficial ownership roadmap by 1 January 2017.

This project has three key objectives in order to support Armenia EITI's preparations for beneficial ownership disclosure by 2020:

1. Undertake a legal review and propose legal amendments to facilitate beneficial ownership disclosure in Armenia
2. Conduct consultations with stakeholders on beneficial ownership disclosure
3. Draft a roadmap for the implementation of the EITI's beneficial ownership requirements in Armenia by 2020

This report provides a legal review of beneficial ownership as it exists currently in Armenia, and proposes a definition of beneficial ownership and recommends legal amendments to ensure that EITI in Armenia meets the January 1<sup>st</sup> 2020 deadline.



## 3. EITI requirements on beneficial ownership & experience so far

### The EITI 2016 Standard

The EITI 2016 Standard was published in February 2016. Requirement two (of eight total requirements) addresses the legal and institutional framework. Requirement 2.5 outlines the requirements specifically for beneficial ownership disclosure. This requirement has seven sub-sections (a-g), which summarised are:

- Implementing countries must maintain a publicly available register of beneficial owners bidding, investing or operating in the extractives sector
- The EITI report documents the government's policy and the Multi-Stakeholder Group's (MSG) discussions on beneficial ownership (and including a beneficial ownership roadmap)
- 1 January 2020 is the deadline for the publicly available register
- Beneficial ownership disclosure must include the name, nationality, country of residence of the beneficial owner, and also identify any politically exposed persons
- The MSG must agree an approach to ensure the accuracy of data submitted by the reporting companies
- The MSG must agree on a definition of beneficial ownership, taking into account both international norms and national laws (publicly listed companies must disclose a link to their stock exchange filings)
- The EITI Report should also disclose beneficial ownership information

### Beneficial Ownership Pilot

Beneficial ownership requirements first appeared in the previous version of the EITI compliance framework – the 2013 EITI Standard. Requirement 3.11. In this previous version, there were no timelines for implementation, and all requirements were encouraged rather than mandatory. There was also no reference to definitions of beneficial ownership following international norms and laws, nor was there reference to PEPs. Following on from the adoption of the 2013 version, all implementing countries were invited to participate in a beneficial ownership pilot. An EITI Board Paper summarises the findings of the pilot exercise.<sup>2</sup>

The beneficial ownership pilot took place between October 2013 and September 2015, with eleven EITI implementing countries participating. The pilot evaluation report noted three key findings:

- The pilot successfully placed beneficial ownership on many national EITI agendas and contributed to the global momentum in tackling hidden ownership. Several countries decided to continue with beneficial ownership disclosure after the pilot. The pilot also helped identify gaps in the law which are currently an obstacle to EITI beneficial ownership disclosure.
- Reliable and comprehensive beneficial ownership information is difficult to gather. Part of the issue is a confusion about the difference between legal ownership and beneficial ownership. However, substantive issues around an enabling legal framework and cases where company ownership is spread across multiple

<sup>2</sup> Beneficial Ownership Pilot Evaluation Report, available here <https://eiti.org/document/beneficial-ownership-pilot-evaluation-report>

- jurisdictions proved to be a challenge.
- The pilot generated useful lessons for future beneficial ownership disclosure, specifically in terms of defining beneficial ownership, disclosure thresholds, and disclosures related to Politically Exposed Persons (PEPs).

Annex A of this report replicates Table 1 of the evaluation report in listing the definitions of beneficial ownership used across the pilot countries. The report notes that “no pilot country seems to have adopted a different definition of PEPs than the one suggested by FATF.” The FATF definition of a PEP is simply “individual who is or has been entrusted with a prominent public function.”<sup>3</sup>

Arguably the most comprehensive and powerful definition of beneficial ownership generated through the pilot is that of **Zambia**:

“a beneficial owner in respect of an extractive company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. To satisfy the need for transparency in extractive industries, “ultimate beneficial ownership” of an extractive company is defined as any individual (or single individual) who:

- has control over the extractive company, either directly or indirectly; or
- has a substantial interest in or receives substantial economic benefits from the assets of the extractive company.

The “ultimate beneficial ownership” shall mean a natural person, and not another company or a trust. For companies with complicated ownership structures, involving many different corporate vehicles or private agreements over ownership and/or control, the ultimate beneficial owners are the individuals who are right at the very top of the chain.

“Control” means the power of a person to secure that the affairs of the extractive company are conducted in accordance with the wishes of that person. Such power would be derived from:

- (i) a sufficient percentage of shareholding or voting rights in the extractive company, including through bearer share holdings, other than a company. A percentage of 20% plus one share shall be evidence of ownership or control through shareholding and applies to every level of direct and indirect ownership; or
- (ii) control over the management of the extractive company through other means such as :
  - a) having the power to appoint or remove over half of members of the governing body of the extractive company; or
  - b) holding rights in relation to the extractive company that, if exercised, would result in the conditions in subparagraphs (i) and (b) being satisfied; or
  - c) whose consent is needed for the appointment of a person to be a member of the governing body of the extractive company.

Publicly listed companies, including wholly-owned subsidiaries, are not required to disclose information on their beneficial owner(s). They have to provide only guidance on how to access this information. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary as per above. Each entity is responsible for the accuracy of the information provided.”

While this definition is a definition of ultimate beneficial ownership, makes reference

<sup>3</sup> <http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html>

to direct and indirect control and cannot vest ultimate beneficial ownership in a company or a trust, its weakness is that there is no reference to politically exposed persons. In this regard, the definition of beneficial ownership from the **Kyrgyz Republic** as included in the October 2017 amended Law on Subsoil Use is optimum:

A 'beneficial owner' is the natural person(s) who directly or indirectly ultimately owns or controls the legal entity.

A politically exposed person is considered a beneficial owner irrespective of the level and extent of ownership or control.

'Ownership and control' shall mean that the individual person(s) who ultimately directly or indirectly:

- a. owns or controls alone or jointly with family members and/or affiliated persons at least 20% of shares or voting rights in the legal entity;
- b. has control of the legal entity through ownership of priority shares, preference shares and / or shares with dual or multiple voting rights;
- c. derives a substantial economic benefit from the legal entity, comprising not less than 15% of the legal entity's annual profit;
- d. holds the right to appoint or remove a majority of the directors of the legal entity;
- e. holds the right to exercise influence and control over the management and operations of the company or has the capacity to predetermine decisions through other means, including and not limited to contract, trust, management agreement, agreement on joint activities.

For the purpose of applying the Code, 'politically exposed person' means an individual who are, or have been, entrusted with prominent public functions and their family members and affiliated persons.

For the purpose of the Code, the following relatives shall be considered as members of immediate family: a father, a mother, a spouse, parents-in-law, a grandmother, a grandfather, a sister, a brother, children, brother's and sister's spouses and children.

For the purpose of the Code the legal entities shall be considered affiliated if:

- a. a legal entity with the right to vote holds 20% and more of voting shares (equity, stakes, hereinafter – shares) of another entity, or by the power of participation or agreement signed between these entities is capable of predetermining the decisions of the other entity;
- b. one third of parties in the managing body of a legal entity or other parties implementing similar functions or their family members are at the same in the managing body or implement similar functions in the other body;
- c. they have been acting in accord aiming at common economic interests.

For the purpose of the Code the legal entities and physical entities shall be considered related if they have been acting in accord aimed at common economic interests or if the physical person or a member of his (her) family is:

- a. a participant holds more than 20% of shares of the legal entity;
- b. has the capacity to otherwise predetermine the decisions of the legal entity;
- c. serves as the chairman of the board, deputy chairman of the board or a member of the board, executive director or vice-director, chairman of the directorate or a member of the directorate, chief accountant or deputy chief accountant, chairman of the audit commission or a member of the audit commission, or chairman of the inspection commission or a member of the inspection commission, or a member of other similar bodies.

## 4. International Definitions of Beneficial Ownership and Political Exposed Persons and Leading Practices

### A Brief History of Beneficial Ownership Disclosure

Beneficial ownership requirements have developed in the past five years, principally in order to combat money laundering and terrorist financing in the wake of major terrorist attacks. In the wake of revelations from leak events known as the Panama Papers and most recently the Paradise Papers, there is now initial pressure to publish beneficial ownership registers for all sectors of the economy to cover both legal and illegal tax avoidance.<sup>4</sup>

Below is a brief timeline of key milestones in the development of an international framework for beneficial ownership disclosure.

**May 2013:** The G8 countries agree to take steps to tackle the issue of hidden ownership, including by “publishing national Action Plans to set up central registries of company beneficial ownership.” This commitment was most recently reiterated at the G7 Summit in June 2015.

**October 2013:** The UK becomes the first country in the world to commit to creating a fully public beneficial ownership register.<sup>5</sup>

**October 2014:** The FATF issues guidance on Transparency and Beneficial Ownership, focusing on the misuse of the category of legal persons, addressing the issue of trust law jurisdictions and outlining requirements for wire transfers, among other issues. This guidance is now the benchmark for all implementations of beneficial ownership requirements in law globally.<sup>6</sup>

**November 2014:** The G20 agrees on the High Level Principles on Beneficial Ownership, requiring that member countries should have a definition of beneficial owner that captures the natural person who ultimately owns or controls the legally registered person or corporate entity; that this information is readily available to the relevant competent authorities (including law enforcement and prosecutorial authorities); that there should be effective information exchange between countries and that the misuse of legal persons should be combatted in each member country, including the prohibition of bearer shares.<sup>7</sup>

**December 2014:** the EU agreed to an updated Anti-Money Laundering Directive (AMLD) that requires member countries to create national-level registers of beneficial ownership information (available to government authorities only). The directive was then published in May 2015.<sup>8</sup>

<sup>4</sup> See for instance [https://www.nytimes.com/interactive/2017/11/10/opinion/gabriel-zucman-paradise-papers-tax-evasion.html?\\_r=0](https://www.nytimes.com/interactive/2017/11/10/opinion/gabriel-zucman-paradise-papers-tax-evasion.html?_r=0)

<sup>5</sup> Available here: <https://beta.companieshouse.gov.uk/>

<sup>6</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>  
<sup>7</sup> [http://www.g20australia.org/sites/default/files/g20\\_resources/library/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20australia.org/sites/default/files/g20_resources/library/g20_high-level_principles_beneficial_ownership_transparency.pdf)

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>

**February 2016:** The EITI 2016 Standard was published. Requirement two (out of eight total requirements) addresses the legal and institutional framework. Requirement 2.5 outlines the requirements specifically for beneficial ownership. This requirement has seven sub-sections (a-g), which summarised are:

- Implementing countries must maintain a publicly available register of beneficial owners bidding, investing or operating in the extractives sector
- The EITI report documents the government's policy and the Multi-Stakeholder Group's (MSG) discussions on beneficial ownership (and including a beneficial ownership roadmap)
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- The EITI Report should also disclose beneficial ownership information

**June 2017:** Armenia signs up to the Organisation for Economic Co-operation and Development (OECD's) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS).<sup>9</sup>

## International Definitions

The FATF provides comprehensive guidance on beneficial ownership<sup>10</sup> and PEPs<sup>11</sup> and can be considered the prevailing international norm for both concepts.

The FATF definition of beneficial ownership is:

*“Beneficial owner refers to 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.*

\* Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

\*\* This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Meanwhile, the FATF definition of a PEP is:

“An individual who is or has been entrusted with a prominent public function.” The FATF guidance also:

- Distinguishes between foreign and domestic PEPs
- Also persons with prominent functions entrusted by international organisations
- Is not intended to cover middle ranking or more junior individuals

<sup>9</sup> <http://www.oecd.org/tax/beps/>

<sup>10</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

<sup>11</sup> <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>

- Applies to family members and close associates

We can compare with another international standard definition of a PEP, the United Nations Convention against Corruption:

“Individuals who are, or have been, entrusted with prominent public functions, and their family members and close associates.”<sup>12</sup>

Again, the EU Anti-Money Laundering Directive<sup>13</sup> definition of a PEP is:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;  
 (b) members of parliament or of similar legislative bodies;  
 (c) members of the governing bodies of political parties;  
 (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;  
 (e) members of courts of auditors or of the boards of central banks; (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;  
 (g) members of the administrative, management or supervisory bodies of State-owned enterprises;  
 (h) directors, deputy directors and members of the board or equivalent function of an international organisation.

## Limitations of the FATF framework for EITI

While the 2016 EITI Standard makes reference to international norms on beneficial ownership, and the FATF definition of both ultimate beneficial ownership and PEPs is straightforward, there are several key conceptual issues with basing EITI beneficial ownership on the FATF definition, in the context of efforts to combat money laundering and terrorist financing.

- There is no public disclosure or public register of beneficial owners required under FATF recommendations. Indeed, FATF recommendations are typically implemented within the financial services sector context of bank secrecy laws, as in the case of Armenia. The international norms therefore are not an ideal platform for transparency initiatives that require public disclosure
- FATF guidelines operated in the context of Know Your Customer banking guidelines; they are not designed to be applicable to governance systems (line ministries) across all sectors of the economy
- Specific sectors that wish to extend FATF-style ultimate beneficial ownership standards run the risk of creating a unique sector precedent, a hostage to fortune scenario which risks the perception of that sector (in the case of EITI, mining or petroleum) is being targeted and “singled out”. This may lead to lobbying and resistance from that sector to parliament
- Although the FATF definition of PEPs includes domestic PEPs, the AML approach tends to prioritise foreign PEPs as the high risk category. The FATF guidance states, “Foreign PEPs are always considered a high risk that warrants taking enhanced due diligence measures. In addition, business relationships with domestic PEPs and international organisation PEPs that are determined to be high risk should be subject to such measures.” In

<sup>12</sup> [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)

<sup>13</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>

contrast, EITI is (and should be) essentially neutral on whether a PEP is domestic or foreign

These issues will have to be borne in mind when designing a beneficial ownership disclosure framework for the mining sector in Armenia.

## International leading practices:

Since the EITI beneficial ownership pilot, there have been some emerging international leading practice. Currently, there is no EITI-based publicly available beneficial ownership register, but all EITI-implementing countries are now making plans, via their individual beneficial ownership roadmaps, to meet the January 2020 deadline. There are two types of initiative in play: firstly, those initiatives which have general application (ie, are multi-sectoral and require *all* companies to comply) and those initiatives which are extractives-sector specific.

In terms of the first category, we will cite two examples. Firstly, the UK has a user-friendly beta-version publicly available database of company registration, which includes information about “Persons with Significant Control”.<sup>14</sup>

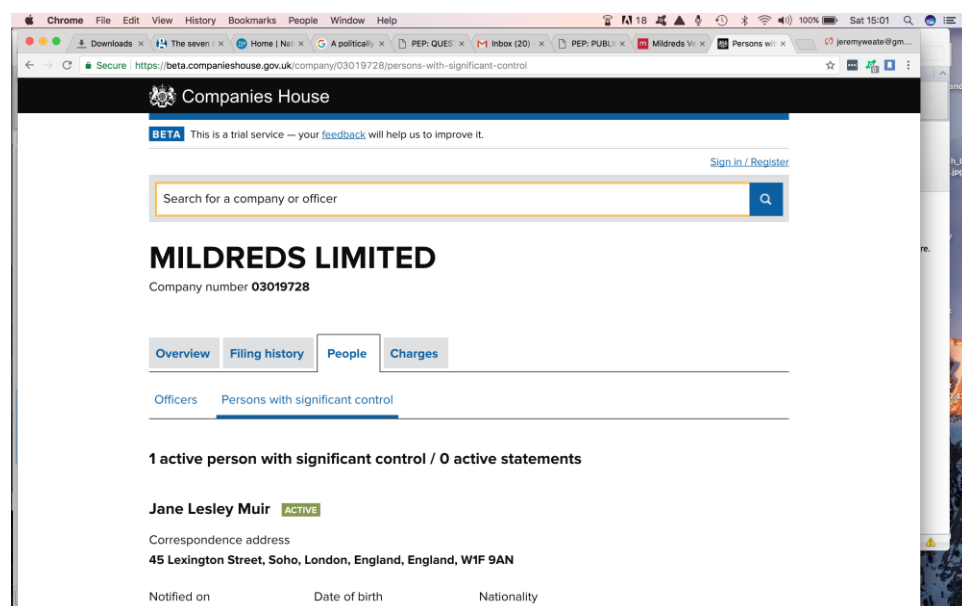


Figure 1 A Search for Persons with Significant Control

The Companies House beta site allows the user to search among *all* UK registered companies, to find an overview of the company, their filing history, any outstanding loans or charges the company may have, as well as the registered officers and “Persons with Significant Control”. A PSC is defined an individual who has more than 25% of shares in a company, or who holds more than 25% of voting rights, or an individual who holds the right to appoint or remove the majority of the board of directors of the company.<sup>15</sup>

It should be noted however that the Persons with Significant Control does *not* include

<sup>14</sup> <https://beta.companieshouse.gov.uk/>

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621568/170622\\_NON-STAT\\_Summary\\_Guidance\\_4MLD\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf)

reference to PEPs. Indeed, UK law does not have a category of a domestic PEP or a domestic PEP register. While there is no publicly available assets register for the judiciary, there is an online register for members of parliament (which includes government ministers). The 2012 Code of Conduct law outlines two forms of asset declaration; the Register of Members Interests, which lists outside employment, sponsorship, property and shareholdings<sup>16</sup> and Declaration of Members' Interests – the requirement that business interests must be declared in the context of relevant parliamentary debate.<sup>17</sup> It is therefore not possible to use the Companies House website to search for the interests of domestic PEPs, simply because the category does not exist in UK law.

Secondly, and in contrast to the UK, Ukraine *does* have a definition of a domestic PEP, and an online database of domestic PEPs is publicly available in Ukrainian and English.<sup>18</sup> The PEP register provides a comprehensive categorisation scheme for PEPs<sup>19</sup>:

1. National public actors
2. Foreign public actors
3. Actors, who perform political functions in international organizations
4. Affiliated persons (Close associates)
5. Related persons (Family members)

For domestic PEPs, Ukraine lists 61 categories, from the President and Prime Minister all the way down to “second category” public servants. Currently the database has over 25,000 individual profiles, over 11,000 profiles of PEPs and over 14,000 profiles of close associates and family members. Each PEP profile includes a career profile (with links), an expandable diagram of family and close associates, personal connections and business connections, an income declaration, a list of monetary assets, a list of gifts, financial liabilities, land, residential buildings, apartments and other real estate, vehicles, assets, and associated legal entities. For the last category, the profile also indicates whether the PEP is a beneficial owner.<sup>20</sup>

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<sup>16</sup> The latest version of the Register is here <https://publications.parliament.uk/pa/cm/cmregmem/171023/171023.pdf>

<sup>17</sup> [http://www.right2info.org/resources/publications/asset-declarations/uk\\_code-of-conduct-house-of-commons](http://www.right2info.org/resources/publications/asset-declarations/uk_code-of-conduct-house-of-commons)

<sup>18</sup> The English language version is here: <https://pep.org.ua/en/>

<sup>19</sup> <https://pep.org.ua/en/hto-taki-publichni-diya/>

<sup>20</sup> The profile of the current president of Ukraine, Petro Poroshenko, is here: <https://pep.org.ua/en/person/2>



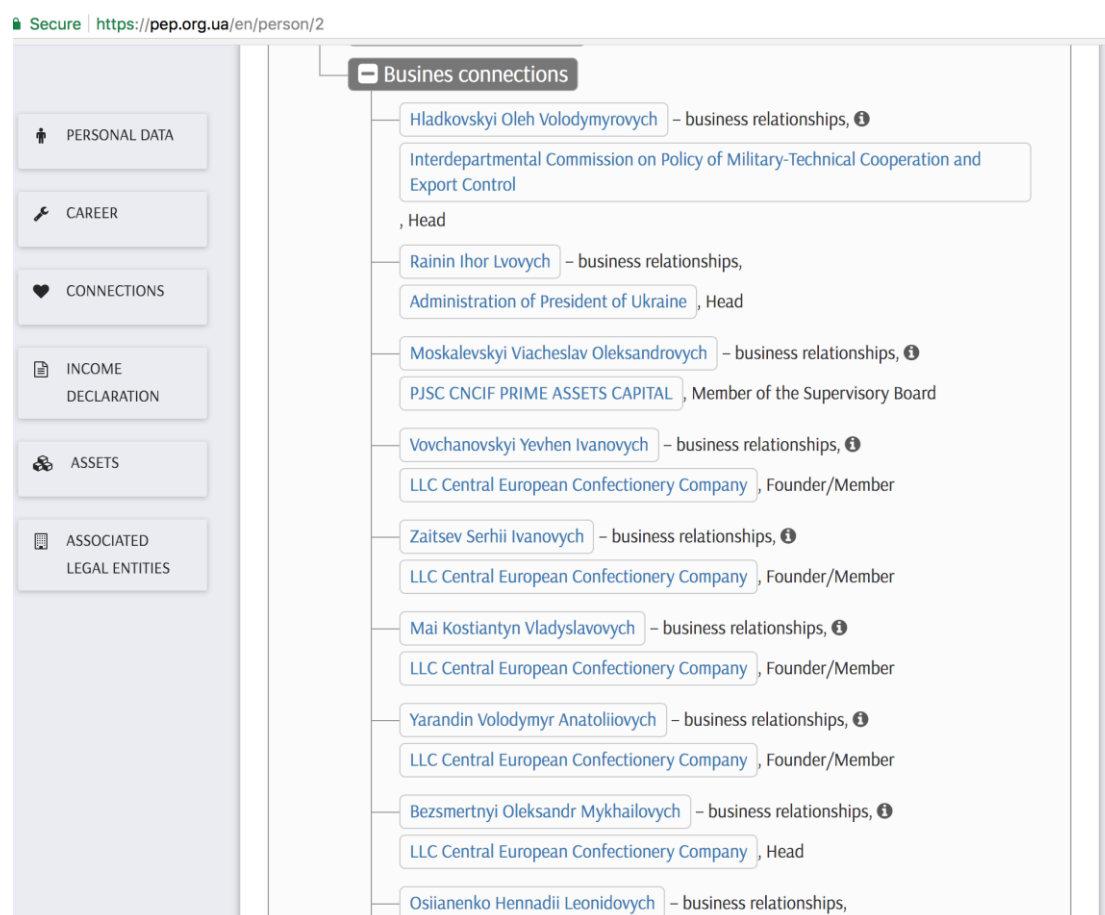


Figure 2 The business connections of the President of Ukraine

Although most countries allow PEPs to hold equity in extractives sector companies (and some countries have a zero threshold of beneficial ownership disclosure), Honduras Mining Law for example prevents public office holders from obtaining equity in extractive licences.

## Related Parties Equity Interests

One question is whether PEP's related or affiliated parties (family members, personal or business associates etc.) should have to disclose their business interests (in the case of Armenia, their mining interests) through the EITI process. The answer is no. In the optimum scenario, the asset registration process for public officials should capture related parties (i.e. simply list them, but not their assets). However that's as far as it should go. There is no requirement for upfront disclosure of related parties beneficial ownership in terms of their beneficial ownership disclosure through an EITI data gathering process.

However, if there is an investigation following a suspicious transaction, then shared databases between the body charged with investigating beneficial ownership and suspicious transactions (in the case of Armenia, the FMC and the Ethics Commission) will be able to follow the data trail, and track down the beneficial ownership interests of related parties.

## 5. Beneficial Ownership and PEPs in the Armenian context

Armenian mining legislation does not contain specific requirements in relation to disclosure of beneficial or ultimate beneficial ownership of mining companies. Mining legislation does not incorporate strict changes of control reporting mechanisms; meanwhile, the regulator of the mining industry – the Mining Agency (part of the MEINR) does not keep a confidential or public registrar on the beneficial owners of the mining companies. The only requirement relates to disclosure of any entity owning more than 10% of the mining company when applying for exploitation license/rights, but this is not a detailed information requirement, neither is it publicly available, nor does it require further disclosure of any detailed information on the owners beyond the first level of any holding in the mining company. In addition, there is no verification of this first-level ownership information, nor are there requirements for updated information to be sent to the State Registry.

Armenian legislation nevertheless contains several examples where beneficial ownership as well as PEPs are defined. Major legislation which contains such provisions are in the field of the financial regulation, the securities market as well as procurement.

The concept of significant participation disclosure is required for the banks and is required in the case of 10% or more of direct or indirect holding; moreover, the CBA has the authority to register changes in significant ownership. Any such change whether direct or indirect in any bank in Armenia is void without the prior consent of the CBA.

A detailed definition of beneficial ownership is set out in the RA Law on Combating Money Laundering and Financing Terrorism, which is based on the FATF definition:

A beneficial owner is a natural person not being a party to the business relationship or transaction, and on whose behalf or for whose benefit the customer acts, and (or) who ultimately owns and (or) controls the customer or the person on whose behalf the transaction is being carried out.

The beneficial owner of a legal person is the natural person, who exercises real control over the legal person or transaction (business relationship), and (or) for whose benefit the business relationship or transaction is being carried out.

A natural person may also be recognised as the beneficial owner of a legal person, if such natural person:

- a. owns 20% or more of the voting stocks (equities, shares; hereinafter: stocks) of the given legal person; or, by force of his/her participation in or under the agreement concluded with the legal person, has the ability to predetermine its decisions;
- b. is a member of the management and (or) governing body of the given legal person;
- c. acts in agreement with given legal person, based on common economic interests.

The Law on Banks and Banking includes a definition of related persons/entities:

### Article 8. Related Entities

4. For the purpose of this Law and other laws regulating banking activities the

following relatives shall be considered as members of immediate family: **a father, a mother, a spouse, parents-in-law, a grandmother, a grandfather, a sister, a brother, children, brother's and sister's spouses and children.**

The complete information on beneficial owners is maintained mostly by the banks in relation to any entity opening a bank account, as per requirements of the AML/PLAF legislation as well as by the CBA in relation to the financial institutions under its oversight and supervision. There is therefore in practice disclosure of beneficial ownership and such registers do exist in Armenia, although they are not accessible by the public. Nevertheless, this experience can be considered and used for the development of the legal changes in relation to beneficial ownership for the mining sector.

Current company registration rules/practices in Armenia do not require public disclosure of the beneficial owner, moreover, ownership disclosure is of a formal nature and as such cannot be considered as a verified and authentic disclosure. Commercial entities with equity exceeding AMD 20,000,000 are required to file a declaration with the state registrar as part of the registration process, nevertheless there is no verification mechanism of this declaration and it is filed internally and is not accessible to the public. First-level ownership information is available for the public on a fee-basis.

Mining companies are typically organized in the form of limited liability companies or closed joint stock companies. The registrar of limited liability companies is maintained by the State Registrar of the Legal Entities of the Republic of Armenia within the Ministry of Justice. The information on the owners of limited liability companies (first level only) is available but not publicly disclosed. The registrar does not have investigative or verification powers in relation to the ultimate beneficiary owners of limited liability companies. The registrar merely registers the information provided as well as registers any changes in ownership of limited liability companies. Such change in ownership is deemed proper and valid once registered with the registrar.

The same regime of register maintenance applies to the shareholders of joint-stock companies through the Central Depository of Armenia. Credit organizations and investment companies provide maintenance services to update the register of the shareholders of the joint-stock companies. Again, the information in the Central Depository is not publicly available and is treated as a bank secret and can be disclosed only through permission of the account holder and/or via a court ruling. Again, there are no investigative or verification powers associated with registration at the Central Depository, nevertheless, in the case of non-resident companies, a degree of checking and scrutiny is implemented as per requirements of the AML law (PLAF is the Armenian acronym for this law). Nevertheless, these processes cannot qualify as a full verification of the ultimate beneficiary owner of companies, but still the practice is sound and based on the AML/PLAF requirements in relation to disclosure of the beneficiary owner at the ultimate level of holding.

It should also be noted that only information on the executive director of the company is available via the requirement to record such information with the State Registrar. Nevertheless, no requirement exists to record the members of the board of directors which might indicate some level of the ownership in the company by the relevant beneficiaries. The legislation on joint-stock companies requires the company to keep the register of the directors of the board with some minimum information incorporated therein, but in practice no such registry is maintained by many companies and again

this information is not publicly available.

The requirements on public servants/officials are more straightforward as there is an obligation to disclose **any** ownership in any commercial entity while in office and submission of updates on an annual basis while still in office. This requirement relates to family members of the public officials as well. The requirement on information submission stays in force in relation to former public officials after retirement for a year. Here the proposal might be to consider the submission of updated information for 3 years following the resignation from office but this might be of little use in case no investigative powers are in place to verify the sources of the income and/or assets announced by the relevant public official, which is currently the practice, as the Ethics Commission has no investigative powers and does not verify submitted data.

## Relevant Government Agencies, Laws and Regulations

As stated above there is no general and unified legislation on disclosure of the beneficial ownership. Relevant provisions are contained in several laws and legal acts:

- RA Law on the State Registration of Legal Entities, State Recording of Separate Divisions of the Legal Entities, Institutions and Individual Entrepreneurs in force since 2001. Amendments introduced in 2016 requires the declaration of the beneficial owner as part of the registration process in cases where the legal entity has equity exceeding AMD 20,000,000. This is based on AML/PLAF requirements and as such has merely formal meaning as there is no further verification or check of the information submitted. Information is not public and kept in the files of the State Registrar;
- Financial Sector Legislation (Law on Securities Market, Law on Banks and Banking etc). The financial sector legislation is considered one of the best and most detailed frameworks in Armenia and is implemented effectively and efficiently by the relevant regulator and licensed entities, such as banks, investment companies and depositaries.. The experience and practice of reporting can be useful in relation to instituting a beneficial ownership registry for mining companies as well as submission of required information etc. Furthermore, detailed regulations of the CBA can be used for development of the secondary legislation required for the mining sector. The concept of related parties is well articulated under the banking legislation, so this can also be useful for mining sector beneficiary ownership disclosure..
- RA Law on Combating Money Laundering and Financing Terrorism has been in force since 2008 and is based on FATF principles and requirements. The law contains the most developed definition of the real or beneficial owner and incorporates the concept of direct and indirect ownership and control as well as control implemented via decision-making or appointment of the senior officers in charge of the company matters as well as business transaction based interest recognition. This definition is implemented in the financial sector and aimed at combatting money laundering and financing terrorism so as such it is not intended for public disclosure, furthermore, it is implemented by the banks and relevant organizations and reporting persons under the strict implementation of the requirements on bank and personal secrecy laws. Nevertheless, this definition and concept incorporated therein can be considered as basis for development of the beneficial owner definition in

mining companies.

- RA Mining Code, which is in force from year 2012 is mostly silent on requirements of the disclosure of the beneficial ownership. The only requirement relates to disclosure of the license applicant's first level owner. There is no public disclosure and no main or essential legal consequences, nevertheless such provision is important as it establishes practice and as such can be further detailed and developed in relation to licensing as well as sale of the shares in mining company to new investor etc.
- RA Law on Procurement, enforced since 2017 has developed detailed disclosure provisions imposed upon applicants for competitive procurement for state contracts. Beneficial ownership information must be provided for persons owning more than 10%, persons having the powers to appoint executive management as well as persons entitled to more than 15% of the profit/income. It shall be specifically noted that in case the applicant is awarded with the tender on procurement the information on the stated person is duly published jointly with the tender winning announcement. This is a welcome development but not sufficient for ensuring complete transparency in relation to applicants and stakeholders having real interest in the companies applying for state tenders. Nevertheless, such legal developments reveals the state policy aimed at ensuring the transparency and accountability in the state procurement system.
- RA Public Service Law, which has been in force since 2012 requires public servants/officials to announce any interest they have in any commercial entity within one month following on from the appointment to the office as well as designating such interest and/or participation to trust management while in office. Also required is an annual declarations of income and assets for public officials and family members as well as requirements on such declaration and reporting for 12 months following on from leaving their post.
- RA Freedom of Information Law has been enforced since 2013, which allows access to information and requires state owned companies as well as companies receiving financing from the budget and companies classified as having public importance and their managers to provide information on request. Nevertheless, it shall be noted that access to information can be rejected in case it falls under the bank secrecy or commercial secrecy protection.
- The new Tax Code, which will be enforced from 2018 is yet to be tested and checked in practice. However, it has new provisions on transfer pricing which were nonexistent until adoption of this new code. It contains a definition on cross-interest in companies, which fall under transfer pricing requirements and in particular sets the threshold of 20% of equity participation.
- We have been informed that the Ministry of Justice has planned amendments to the RA Law on the State Registration of Legal Entities, State Recording of Separate Divisions of the Legal Entities, Institutions and Individual Entrepreneurs, with the aim of creating a unified platform for disclosing information on the companies, its managers, owners etc. Nevertheless, we have not seen the draft and according to our information the content on additional disclosure requirements shall be defined by the decision of the Government of the Republic of Armenia. In our opinion, the best approach

would be to set the disclosure requirements in the law to avoid frequent changes via changes to the regulations. Moreover, there is a need to ensure information is available publicly. Needless to say, capacity building in verification are needed for the State Registrar to ensure there is proper compliance with the additional disclosure and information provisions.

In our opinion in defining how MEINR and/or State Registrar shall establish its registrar of beneficial owners of mining companies the experience of the following entities which keep registers of companies and public officials declarations shall be taken into consideration:

1. State Registrar, in relation to keeping the information on the first level participants of the limited liability companies
2. Central Depository of Armenia and its agents (banks, investment companies etc), which maintain the registry of the shareholders of joint-stock companies
3. Ethics Commission, which publishes the declarations of public officials and their family members.

## 7. Proposed Approach

Given the limitations of the current situation regarding beneficial ownership, a sector-specific approach for beneficial ownership in the mining sector has to be taken in order for EITI in Armenia to meet the January 1<sup>st</sup> 2020 deadlines, building on the existing sector-specific scenario. This approach will support the proposed multi-sectoral approach, but not be hostage to potential delays in ensuring ultimate beneficial ownership disclosure is required of all companies upon registration.

Previous reports such as Scoping Study for Republic of Armenia's 2018 Extractive Industries Transparency Initiative Report and the report on the Disclosure of Ultimate Beneficiaries prepared by civil society expert David Hakobyan have identical findings and refer to the absence of enforceable industry specific legislation as well as identifying a weakness or even absence of verification and/or investigative powers and competence in existing systems.

Nevertheless, the experience and practice currently in place in financial organisations as well as in the regulator (CBA and its Financial Monitoring Centre) can be of use for development of the relevant amended legislation and capacity in the Ministry of Energy Infrastructure and Natural Resources (MEINR).

The most important issue now is to propose a definition of the concept of beneficial ownership, based on the international leading practices identified in section four of this report, the Armenian context outlined in the previous section as well as the approach taken by other former Soviet countries sharing the same experience and legislative development history and culture.

In terms of a definition of beneficial ownership that will be added to the Mining Code, we therefore propose the following, which is based on a consideration of international examples, draws directly on the recent example of the Kyrgyz Republic's October 2017 amended Law on Subsoil Use and is approved by the EITI International Secretariat and based on the concepts of the beneficial ownership developed under the Armenian law up to date:

A 'beneficial owner' is the natural person(s) who directly or indirectly ultimately owns or controls the legal entity.

A politically exposed person is considered a beneficial owner irrespective of the level and extent of ownership or control.

'Ownership and control' shall mean that the individual person(s) who ultimately directly or indirectly:

- a. owns or controls alone or jointly with family members and/or affiliated persons at least 20% of shares or voting rights in the legal entity;
- b. has control of the company through ownership of priority shares, preference shares and / or shares with dual or multiple voting rights;
- c. derives a substantial economic benefit from the legal entity, comprising not less than 15% of the legal entity's annual profit;
- d. holds the right to appoint or remove a majority of the directors of the legal entity;
- e. holds the right to exercise influence and control over the management and operations of the company or has the capacity to predetermine decisions through other means, including and not limited to contract, trust, management agreement, agreement on joint activities.

For the purpose of applying the Code, 'politically exposed person' means an individual who are, or have been, entrusted with prominent public functions and their family members and affiliated persons.

For the purpose of the Code, the following relatives shall be considered as members of immediate family: a father, a mother, a spouse, parents-in-law, a grandmother, a grandfather, a sister, a brother, children, brother's and sister's spouses and children.

For the purpose of the Code the legal entities shall be considered affiliated if:

- a. a legal entity with the right to vote holds 20% and more of voting shares (equity, stakes, hereinafter – shares) of another entity, or by the power of participation or agreement signed between these entities is capable of predetermining the decisions of the other entity;
- b. one third of parties in the managing body of a legal entity or other parties implementing similar functions or their family members are at the same in the managing body or implement similar functions in the other body;
- c. they have been acting in accord aiming at common economic interests.

For the purpose of the Code the legal entities and physical entities shall be considered related if they have been acting in accord aimed at common economic interests or if the physical person or a member of his (her) family is:

- a. a participant holds more than 20% of shares of the legal entity;
- b. has the capacity to otherwise predetermine the decisions of the legal entity;
- c. serves as the chairman of the board, deputy chairman of the board or a member of the board, executive director or vice-director, chairman of the directorate or a member of the directorate, chief accountant or deputy chief accountant, chairman of the audit commission or a member of the audit commission, or chairman of the inspection commission or a member of the inspection commission, or a member of other similar bodies.

The covered public positions include:

- Heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned enterprises, or important political party officials;
- Also former officials, if they still have influential roles;
- Family members by blood, marriage or other civil partnership, can stretch beyond immediate family;
- Associates can be both personal social and professional.”

As already noted, Armenian legislation already stipulates the need for public officials to disclose any ownership in any commercial entity they have direct or indirect ownership and this requirement is extended to the family members as well. Therefore this definition of PEP is already effectively in operation in Armenia in the Ethics Commission assets register.

In terms of the development, adoption and enforcement of the requisite changes to the Mining Code of the Republic of Armenia, the stress should be put on development of the relevant compliance and enforcement mechanism *requiring* UBO disclosure.

In our opinion the following principles shall be considered in preparation of the draft amendments to the legislation, including and not limited to the Mining Code, in order



to provide the most efficient basis for securing proper public disclosure of ultimate beneficiary owners of the mining companies:

1. Proper definition of the beneficiary owner of the mining company, based on:
  - a. Direct or indirect ownership of shares (we propose the threshold of 10% at any level of holding)
  - b. Having the power to appoint the managers and/or member of the board of directors of the mining companies by virtue of participation in the mining company equity irrespective of the size of ownership and/or based on contractual or business relationship or his/her reputation;
  - c. Any contractual right to directly or indirectly manage the mining company;
  - d. Any contractual or similar profit sharing arrangement in relation to the mining company entitling relevant person to receive more than 5% of profit;
  - e. No disclosure required for shares listed in a reputable stock exchange (in line with EITI requirements)
2. The proper disclosure of the ultimate beneficiary owner shall be a requirement for receiving a mining licence (whether for exploration or exploitation), this requirement should be in force from second half of 2019;
3. Requirement on disclosure of the beneficiary owners for all metallic mining companies (including existing companies) before January 1<sup>st</sup> 2020;
4. Verification powers to be vested in the MEINR and/or State Registrar in relation to independent verification of the disclosed beneficial owners as well as relevant compliance enforcement tools, including and not limited to verification of the financing of the mining companies, especially loans from non-financial institutions or “offshore” companies with no substance etc;
5. Defining list of sanctions in relation to improper compliance with the disclosure requirement, including and not limited to a period of 60 days, financial liability (size of the penalty to be significant) as well as revocation of license as the ultimate enforcement tool, which can be applied only through the court ruling based on sufficient evidence of improper or misleading disclosure of the beneficiary owners;
6. Information covenant to duly inform MEINR on any change in equity of the mining company which results in acquisition in one or several series of transactions, including affiliated transactions, by any person, whether directly or indirectly of the 10% prior to its closing and failure of such information covenant implementation shall result in transaction being void.

## Data Collection and Verification

There are two options for the collection and verification of beneficial ownership data under the proposed scheme (amendments to the Mining Code):

- Option 1- Optimise information gathering within the two existing registration sources (Central Depository and State Registry), piloting beneficial ownership disclosure for the mining sector
- Option 2 – Beneficial ownership information is disclosed to the Mining Agency within the MEINR for checks and verification

The advantage of Option 1 is that capacity is built based on existing registration capacity, and prepares both registration processes for the planned multi-sectoral approach to beneficial ownership disclosure. The disadvantage is that there are more moving parts involved; this approach requires capacity building to improve two separate administrative processes and certain risks jeopardising the EITI deadline for

a public beneficial ownership register of 1<sup>st</sup> January 2020 deadline. A further disadvantage of Option 1 is that there is currently no publicly available integrated database (covering different types of companies), therefore EITI requirements impose a step change and significant change management to internal systems. Moreover, selection of such option would mean that State Registry will be basically acting as having semi-regulatory functions in relation to proper review and confirmation of changes to the ownership of the mining company and even lead the registrar on ultimate beneficiary owners of second and upper level of ownership in mining companies, including the registration of changes on such level of ownership of the mining company which is above the first level of ownership.

The advantage of Option 2 is that it builds capacity in the Mining Agency to monitor and understand the ownership structures of the companies operating within their field of jurisdiction. The second advantage is that ensuring that this information is publicly available (via a beneficial ownership register published on the MEINR website) requires much less change management, and no integration of previously separate IT systems.

There is in addition a midway option, which is that in terms of training and capacity building on verification of beneficial ownership information, officials from both the Mining Agency *and* the State Registry are included, so that the latter are well prepared for the planned multi-sectoral approach.

Given the current stage of legislative development and institutional frameworks in Armenia and the upcoming introduction of unified business/company registry, transfer of all data to State Registrar, including and not limited to companies data as well as databases on licenses, permits etc, we recommend the adoption of a multi-sectoral approach to the public disclosure of the ultimate beneficial owners of mining companies through development, adoption and enforcement of amendments to the Mining Code of the Republic of Armenia and vesting the State Registrar and Ministry of Energy Infrastructure and Natural Resources (MEINR) with certain verification and compliance enforcement rights. This will ensure that a public register of beneficial owners in the mining sector is ready before the EITI deadline of January 1<sup>st</sup> 2020.

For these reasons, we recommend to option 1 based on the following schedule:

1. 2018: prepare amendments to the Mining Code and consult all stakeholders with view of adoption by end of year 2018
2. Ensure that the amended legislation is in place by June 2019, with enforcement planned from 2020
3. Voluntary disclosure of beneficial ownership information for the second EITI report (due final quarter 2019)
4. MEINR and Ministry of Justice begin preparation of secondary legislation and establishment of public registrar for owners of the mining companies from June 2019 to ensure sufficient time for testing the system prior to enforcement
5. MEINR/EITI conduct series of seminars, education and outreach on new legislation requirements from year 2019.

The key point is that amendments to the Mining Code prepared in 2018 will also require changes to other laws as stated under Annex A to this Legal Report and regulations as well as development of the sector specific secondary legislation.

## 8. Institutional recommendations

We consider that based on the proposed multi-sectoral approach data shall be submitted to MEINR (as per the Mining Code amendment) *and* to the State Registry or Central Depository of Armenia as the case might be. The Ethics Committee shall also be entitled to receive information (on PEPs-related data) and there shall be established rules of exchange of information between all relevant agencies and institutions via a set of MOUs between agencies.

It shall be further required to ensure that information is duly published by State Registrar and accessible without any restriction (including any fee payment) to the public.

The verification powers shall be concentrated with MEINR but other institutions (such as the State Registry) shall have the obligation to cooperate with MEINR in relation to such verification.

An alternative option is that the investigative powers of MEINR can be vested to specialized agency (such as FMC of CBA), given its relevant experience and practice. In our opinion, capacity shall be instated and developed in the Mining Agency of MEINR, given its responsibility for overseeing the mining sector. This will help establish a good culture of regulation and enforcement as currently is in place with other regulators such as Central Bank of Armenia.

## Annex A: Beneficial Ownership Definitions in the EITI Pilot

Country	Beneficial ownership definition	Threshold
Burkina Faso	<p>The beneficial owner can be defined as “any individual who ultimately owns or controls the customer and/or the individual for whom a transaction is executed or an activity is performed. This refers to any individual who holds, in whole or in part, rights related to mining assets located in Burkina Faso, mining permits and stakes, shares or any other rights in entities, whatever their legal form, the assets of which consist mainly of rights linked to extractive licences located in Burkina Faso, either directly or indirectly through one or several intermediate entities in Burkina Faso or in foreign countries.. ”</p> <p>The beneficial owner can also be defined as follows: “whoever presents coupons in order to receive interest payments or dividends is, failing proof to the contrary, deemed to be the owner of the coupons. In cases where coupons are presented on behalf of third parties, the presenter has the ability to provide the paying institution with a list indicating, in addition to his own name, first name(s) and genuine domicile, the name, first name(s) and genuine domicile of the beneficial owners and the value of the coupons belonging to each of them.”</p>	No
DRC	<p>Congolese laws do not define beneficial ownership. Thus the MSG agreed on the following definition for the purpose of the pilot:  <i>For the purpose of transparency in the extractive industry, the term "beneficial owner "of a mining, oil or gas company, means any actual beneficiary of:</i></p> <p>a) b)  c)  <i>income generated or accrued from sales, transfer or disposal of marketable products by holders of licenses, permits or authorisations as a treatment and processing entities; income generated or accrued from sales, transfer or disposal of shares in liquid hydrocarbons by contractors or of ownership interests of a contractor under oil and gas agreements; and income of all kinds, other than oil costs, accrued or generated by an operating company in oil and gas blocks in application of the terms of agreements, laws or regulations relevant to oil and gas works carried out by the same operating company.</i></p> <p><i>Beneficial owner refers to any individual person who, directly or indirectly, by any means, including through artificial means which are legally accepted:</i></p> <ul style="list-style-type: none"> <li>• a) <i>performs the ultimate effective control over a company, or</i></li> <li>• b) <i>holds an interest in or derives a substantial financial benefit from the company at the expense of other shareholders or partners.</i></li> </ul>	Yes: ≥ 25%

	<p><i>Effective control means:</i></p> <ul style="list-style-type: none"> <li>• a) the individual person who ultimately owns or controls directly or indirectly a sufficient percentage of shares or voting rights in the legal entity', including through bearer shares, other than those of a company listed on a regulated market that is subject to disclosure requirements in line with equivalent international standards. A percentage of 25% plus one share is a proof of ownership or controlling interest, which applies to any level of direct or indirect shareholding;</li> <li>• b) the individual person or persons who ultimately, without having at their possession a sufficient percentage of shares or voting rights in that legal entity, have direct or indirect control of the company through ownership of priority shares, preference shares and / or shares with dual or multiple voting rights;</li> <li>• c) if it cannot be ascertained that the persons referred to above are the beneficial owners, then the natural person(s) who exercise control over management of the legal entity through other means or processes, would be considered as beneficial owners.</li> </ul> <p>This definition was used in both the 2012 and the 2012 EITI Reports from DRC.</p>	
Honduras	<p>There is no legal definition or mentioning of beneficial ownership in any laws in Honduras. For the purpose of the pilot, the MSG agreed on the following definition:</p> <ul style="list-style-type: none"> <li>• a) A beneficial owner is a natural person who ultimately directly or indirectly owns 5% or more of the shares of a company operating in the Honduran extractive sector. This parameter ensures that all beneficial owners with a substantial interest in the company are identified.</li> <li>• b) Natural persons who hold a public office are disqualified from holding concessions (Article 75 General Mining Law), or owning or controlling any percentage of shares of an extractive company.</li> </ul>	Yes: ≥ 5%
Kyrgyz Republic	<p>Beneficial ownership is mentioned in several legal texts, including in anti-money laundering laws and regulations as well as in the Law on subsoil use no 77(2014). Drawing on existing definitions of beneficial owners, the MSG agreed the following definition for the purpose of the pilot: "A beneficial owners is a natural person who has the title to property, influences transactions, obtains a certain benefit from transactions, and who has an ownership stake of at least 5%. If the beneficial owner is a politically exposed person their stake must be disclosed irrespective of the size of the stake."</p>	Yes: ≥ 5%
Liberia	<p>A beneficial owner:</p> <ul style="list-style-type: none"> <li>• (i) is always a natural person and is never a company;</li> <li>• (ii) is the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity.</li> </ul> <p>A beneficial owner is never:</p> <ul style="list-style-type: none"> <li>• a) a minor child (under 18);</li> <li>• b) a person acting as a nominee, intermediary, custodian or agent on behalf of another person;</li> <li>• c) a person acting solely as an employee of a corporation or limited liability company and whose control over or</li> </ul>	Yes: ≥ 5% and ≥ 10 %

	<p>economic benefits from the corporation or limited liability company derives solely from the employment status of that person.</p> <p>Information will be requested on all owners (shareholders) with not less than 5 % ownership of shares (aggregate or otherwise) issued by companies in the oil, mining (Mineral Development Agreement (MDA) holders) and agriculture; and 10% ownership of shares in the forestry sector and for companies holding mining rights that are not MDAs. In the instance where a single individual does not own at least five (5)/ten (10) % in a mining, oil, forestry or agriculture company, the top five shareholders with the greatest percentage of ownership (shares) rights will be requested to disclose their beneficial ownership.</p>	
Niger	The MSG began work on reviewing relevant legal texts in order to ensure consistency between a definition of beneficial ownership and national laws. However, it does not seem like this work was concluded, nor does it seem like the MSG agreed a definition of beneficial ownership for the purpose of the pilot.	No
Nigeria	The NEITI 2012 oil and gas audit states that “the Beneficial Owners of Companies operating in the Nigerian Oil and Gas Industry as defined within the scope of the EITI requirement 3 are the natural person(s) who directly or indirectly (through another company) ultimately controls the corporate entity except for publicly listed companies and wholly owned subsidiaries” (p.37). No definition is provided in the mining report. However, NEITI’s evaluation report states that the MSG agreed that “since BO disclosure is a novelty, the expressed definition in the EITI Standard was best suited for present purposes so as to give its implementation global outlook that would be acceptable to Nigerians. However the NSWG also agreed that it would visit the definition as the implementation of the BO progresses, if need be... the definition should be of a general application in the extractive industry i.e. for both Oil & Gas and Solid Minerals BO disclosure in Nigeria” (p.4).	Zero
Tajikistan	Beneficial ownership is mentioned in several legal texts, including in the Law on Banking Activity (2009) and anti-money laundering laws. Drawing on existing definitions of beneficial owners, the MSG agreed the following definition for the purpose of the pilot: “A beneficial owner is one or more natural persons who ultimately have the rights of ownership and also have de facto control of the client and/or person in whose interests the transaction is being carried out, with an ownership share of 5% or more. If the beneficial owner is a politically exposed person, his share is subject to compulsory disclosure irrespective of the shareholding.”	Yes: ≥ 5%
Tanzania	The MSG has not yet agreed a definition of beneficial ownership. The MSG is procuring a consultant to undertake a BO study, and this will include proposing a definition of beneficial ownership. There has been some discussion around a potential ownership threshold, with many stakeholders agreeing that 5% appears appropriate.	TBC
Togo	It seem like the MSG did not agree a definition of beneficial ownership for the purpose of the pilot.	No
Zambia	The MSG’s definition of beneficial ownership was based on the Mines and Minerals Development Act (2008) and the Zambian Income Tax At (1996). Based on a recommendation from the firm hired to produce the BO report, the MSG agreed the following definition for the purpose of the pilot:	Yes: >20%

	<p><i>“In accordance with EITI Requirement 3.11.d.i, a beneficial owner in respect of an extractive company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. To satisfy the need for transparency in extractive industries, “ultimate beneficial ownership” of an extractive company is defined as any individual (or single individual) who:</i></p> <ul style="list-style-type: none"> <li><i>- has control over the extractive company, either directly or indirectly; or - has a substantial interest in or receives substantial economic benefits from the assets of the extractive company.</i></li> </ul> <p><i>The “ultimate beneficial ownership” shall mean a natural person, and not another company or a trust. For companies with complicated ownership structures, involving many different corporate vehicles or private agreements over ownership and/or control, the ultimate beneficial owners are the individuals who are right at the very top of the chain.</i></p> <p><i>“Control” means the power of a person to secure that the affairs of the extractive company are conducted in accordance with the wishes of that person. Such power would be derived from:</i></p> <ul style="list-style-type: none"> <li>• <i>(i) a sufficient percentage of shareholding or voting rights in the extractive company, including through bearer share holdings, other than a company. A percentage of 20% plus one share shall be evidence of ownership or control through shareholding and applies to every level of direct and indirect ownership; or</i></li> <li>• <i>(ii) control over the management of the extractive company through other means such as :</i> <ul style="list-style-type: none"> <li><i>a) having the power to appoint or remove over half of members of the governing body of the extractive company; or</i></li> <li><i>b) holding rights in relation to the extractive company that, if exercised, would result in the conditions in subparagraphs (i) and (b) being satisfied; or</i></li> <li><i>c) whose consent is needed for the appointment of a person to be a member of the governing body of the extractive company.</i></li> </ul> </li> </ul> <p><i>Publicly listed companies, including wholly-owned subsidiaries, are not required to disclose information on their beneficial owner(s). They have to provide only guidance on how to access this information. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary as per above. Each entity is responsible for the accuracy of the information provided.”</i></p>	
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