

*This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at [www.eiti.org](http://www.eiti.org).*

# Developing a roadmap for beneficial ownership disclosure

## Guidance note 22 – Requirement 2.5

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## 1. Introduction

Transparency about government revenues from the extractive sector is important for accountability, but says little about who owns and ultimately profits from the activities of the oil, gas and mining companies. The identity of the real owners – the ‘beneficial owners’ – of the companies that have obtained rights to extract oil, gas and minerals is often unknown, hidden by a chain of unaccountable corporate entities. This problem affects other sectors and often helps to feed corruption and tax evasion. People who live in resource rich countries are at risk of losing out as extractive assets are too often misallocated for corrupt reasons.

With the adoption of the 2016 EITI Standard (provision 2.5), the EITI has agreed that by 1 January 2020, all implementing countries must ensure that corporate entities that bid for, operate or invest in extractive assets disclose the identity of their beneficial owners. In addition, any politically exposed persons who are beneficial owners must be identified. It is recommended that the beneficial ownership information is made available through a public registers. At a minimum, the information must be included in the country’s EITI Report, or the report should include a link to an online beneficial ownership information platform. In order to ensure that the necessary preparatory steps and reforms are undertaken, implementing countries are also required to agree and publish roadmaps for their beneficial ownership disclosures by 1 January 2017.

Developing viable roadmaps that have broad support appears important for successful implementation of the EITI’s beneficial ownership requirements.

This note seeks to guide multi-stakeholder groups in developing their roadmaps, highlighting twelve issues that should be considered. The development of the roadmaps and the subsequent implementation of actions in the roadmaps are likely to require considerable consultation with government ministries and agencies, companies and civil society organisations. It is likely to benefit from significant technical and financial assistance. Close coordination with development partners will be necessary to ensure that there is adequate funding and support both to developing the roadmaps and to their implementation.

## 2. Requirements covering this topic

### 2.5 Beneficial ownership

- a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.
- b) It is required that:
  - i. The EITI Report documents the government’s policy and MSG’s discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.
  - ii. By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership

information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report.

- c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.
- d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.
- e) The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.
- f) Definition of beneficial ownership:
  - i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
  - ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.
  - iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.
  - iv. 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 of a publicly listed company. Each entity is responsible for the accuracy of the information provided..
- g) The EITI Report should also disclose the legal owners and share of ownership of such companies.

### 3. Requirements for the content of a beneficial ownership roadmap

The EITI Standard states that *“By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report”* (Requirement 2.5.b.ii).

This means that the roadmap needs to contain the following:

1. Plans and activities for how the government will ensure that the “corporate entity(ies) that bid for, operate or invest in extractive assets” disclose the “identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted”. (Requirement 2.5.c).

2. Actions needed to ensure that the “information about the identity of the beneficial owner includes the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons”. (Requirement 2.5.d).
3. The steps that the multi-stakeholder group will take to consider and “agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide”. (Requirement 2.5.e).
4. Any actions needed to inform the multi-stakeholder group’s discussion and decisions on a beneficial ownership definition, thresholds, joint venture disclosures, and reporting obligations for politically exposed persons. (Requirement 2.5.f).
5. Milestones and deadlines for implementing the roadmap activities, as well as plans for evaluation implementation of the roadmap as part of the annual activity report. (Requirement 2.5.b.ii).

The roadmap may also indicate any activities aimed at addressing any barriers to beneficial ownership disclosure. “Where a country is facing constitutional or significant practical barriers to the implementation of [the beneficial ownership requirement by 1 January 2020, the country may seek adapted implementation”. (Requirement 2.5.c).

The exact plans, activities and actions of a beneficial ownership roadmap will depend on the local circumstances of each country. In some cases, countries may find that in order to achieve the above, they may need to consider undertaking legal reviews and/or pursue legislative or regulatory amendments. There are likely to be capacity building needs. Some countries might want to reform existing corporate or license registers with a view to integrate beneficial ownership information. Countries may need to seek technical and financial support. All these activities can be part of what the roadmaps set out to achieve.

#### 4. Guidance on developing a beneficial ownership roadmap

Based on the lessons learnt from the beneficial ownership pilot and other international experience, the following section is intended to guide multi-stakeholder groups in considering the issues that are likely to be relevant for the beneficial ownership roadmap.

##### 4.1 Consider how beneficial ownership disclosure can support national reform priorities

The EITI Standard states that the multi-stakeholder group should set “EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries” (requirement 1.5.a). Extractive project can yield great profits both to extractive companies and governments. In many cases such projects are run by responsible companies with the necessary technical and financial capacity to develop the extractive asset. However, experience has unfortunately also shown that in many cases, in particular where governance is weak, rights to extract oil and minerals may be given to companies that do not have such competence. Rather, such companies may be given access to profitable extractive projects because their owners are politically connected, or because their owners are willing to engage in questionable deals aimed at generating quick profits for a few rather than benefits for wider society. It has been estimated that developing countries lose USD 1 trillion each year as a result of corrupt or illegal deals, many of which involve anonymous companies<sup>1</sup>. In 2013, the Africa Progress Panel estimated that the Democratic Republic of the Congo (DRC) in the period 2010-2012 lost at least USD 1.36 billion from five mining deals hidden behind a structure of complex and secret company ownership<sup>2</sup>. According to

<sup>1</sup> <http://www.one.org/international/policy/trillion-dollar-scandal/>

<sup>2</sup> <http://www.africaprogresspanel.org/africa-progress-panel-urgestransparency-in-potential-drc-mining-deal/>

DRC's EITI Reports, this is about the same as the country's average annual revenue from oil, gas and mining in the same time period. Disclosure of beneficial ownership will help lower the risk of financial misconduct.

Transparency in beneficial ownership can help deter corruption in extractive deals, contribute to prevent transfer pricing and tax evasion and improve the investment climate. **The MSG might wish to begin its discussion of beneficial ownership and roadmap planning by establishing the relevance of beneficial ownership disclosure to national debates and priorities aimed at addressing existing challenges in the extractive sector.** Establishing this relevance early on may contribute to build understanding of how openness about beneficial ownership can be beneficial to the country, build stakeholder support for this work, and ensure that the activities in the MSG's roadmap are linked to wider government priorities.

#### 4.2 Consider the institutional framework for beneficial ownership disclosure.

The EITI Standard requires that "corporate entity(ies) that bid for, operate or invest in extractive assets" should disclose the identity(ies) of their beneficial owners. To achieve this, **it is recommended that the roadmap includes activities aimed at broad consultations with government agencies and other stakeholders in order to identify the agency(ies) that is responsible or could best suited to oversee, collate and maintain beneficial ownership information, as well as any existing public filing processes that could easily accommodate beneficial ownership disclosures.** This might include reviewing and/or amending existing company filing requirements upon company registration to include beneficial ownership information, and considering adding filing requirements related to beneficial ownership disclosure in bidding processes and license registries for extractive projects.

The EITI pilot project on beneficial ownership showed that in most countries, the concept of beneficial ownership was not covered by any existing legislation, which suggests a low likelihood that legal obstacles to beneficial ownership disclosure would exist. At the same time, many pilot countries concluded that enabling legislation would likely result in better compliance with beneficial ownership disclosure requirements. Although enabling legislation is not necessarily essential, **the multi-stakeholder group might wish to consider whether the roadmap should include legal reviews in particular with a view to identify opportunities for embedding requirements for beneficial ownership disclosure in national legal instruments, in particular where relevant legal and regulatory reforms are already planned or underway.**

#### 4.3 Consider how to develop a definition of beneficial ownership

The EITI Standard defines a beneficial owner in respect of a company as "the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity" (Requirement 2.5.f.i). This may thus include the person(s) who own or control the shares or voting rights in a company limited by shares, the person on whose behalf shares in a company are held by somebody else, or the person(s) that by other means control the way the company is run regardless of whether they have any interest in the shares of the company. This also includes cases where the company is not limited by shares. An ultimate beneficial owner can never be a proxy, nominee or another company.

The EITI Standard further notes that "the multi-stakeholder group should agree an appropriate definition of the term "beneficial owner". The definition should be aligned with the EITI Standard definition noted above and take international norms and relevant national laws into account, and should include

ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons” (Requirement 2.5.f.i).

In order to develop an appropriate definition of beneficial owners, **it is recommended that the roadmap includes activities such as reviewing whether national laws include a definition of beneficial owners, exploring existing international and national definitions, and agreeing an appropriate definition and ownership thresholds in order to operationalize reporting of beneficial ownership.** Some examples of definitions are provided in box 1 and 2 below. For a compilation of the definitions used by pilot countries, please consult the beneficial ownership evaluation report<sup>3</sup>

### ***Lessons learnt from the beneficial ownership pilot - thresholds***

The EITI beneficial ownership pilot revealed that no country had an existing beneficial ownership definition that was considered appropriate for the purpose of the pilot. Lack of appropriate beneficial ownership definitions was a key challenge in obtaining useful beneficial ownership data. About half of the pilot countries included a threshold in their definitions whereby a natural person who directly or indirectly holds a minimum percentage of ownership or control of the company was considered a beneficial owner. This approach was also applied to cases of indirect control, i.e. where ownership was held through a chain of companies or legal entities. Thresholds ranged from 5-25%. The pilot showed that it is important that such thresholds are established taking into account the corporate structure of the companies operating in the country, an individual’s full aggregated interest as well as different means of exercising ownership and control. A seemingly good practice related to thresholds was Liberia’s attempt to agree a definition that would capture cases where no single individual holds enough ownership to be captured by the threshold. The MSG set at threshold at 5% /10% (different thresholds for different sectors), but also agreed that in cases where a single individual does not own at least 5% /10%, beneficial ownership information will be requested from the top five shareholders with the greatest percentage of ownership rights. However, shareholder equity is not the only mechanism for exerting control over a company, and thresholds should apply regardless of how ownership or control is exercised. For example, if the threshold is 5%, then this threshold should apply whether a person maintains ownership via 5% of shares (directly or indirectly) or if they maintain 5% control over the company (via powers of attorney, contractual arrangements, etc.).

#### *Box 1 – Financial Action Task Force definitions*

**Beneficial owner** refers to the natural person(s) who ultimately<sup>50</sup> owns or controls a customer<sup>51</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Source: [Glossary of the FATF Recommendations](#)

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

#### *Box 2 – 4<sup>th</sup> EU Anti Money Laundering Directive definitions*

<sup>3</sup> [https://eiti.org/files/BP/board\\_paper\\_30-4-b\\_beneficial\\_ownership\\_pilot\\_-\\_evaluation\\_report.pdf](https://eiti.org/files/BP/board_paper_30-4-b_beneficial_ownership_pilot_-_evaluation_report.pdf)

(6) 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(b) in the case of trusts:

(i) the settlor;

(ii) the trustee(s);

(iii) the protector, if any;

(iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);

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

#### 4.4. Consider reporting obligations for politically exposed persons

The EITI Standard states "the definition [of a beneficial owner] should specify reporting obligations for politically exposed persons" (Requirement 2.5.f.ii). The model beneficial ownership declaration form developed by the EITI includes fields for disclosing whether any of the beneficial owners are politically exposed persons (PEPs), including information about the public office position and role, or other reason for PEP designation, and the dates of holding office.

In order to ensure that the beneficial ownership definition includes appropriate reporting obligations for PEPs, **it is recommended that the roadmap includes activities aimed at investigating existing national**

**definitions and reporting requirements for PEPs with a view to identifying national policy objectives on this subject and aligning the beneficial ownership definition accordingly.** Some examples of PEP definitions are provided in box 4 below.

### ***Lessons learnt from the beneficial ownership pilot – PEPs***

The legal reviews undertaken by some of the pilot countries shows that there are often legal requirements for PEPs to disclose assets, but that such disclosures are not always enforced or publicly available. In

Honduras for example, the Mining Law prevents public office holders from obtaining extractive licenses due to potential conflicts of interest. However, the concept of beneficial ownership is not recognised and there is thus no law that explicitly prevents PEPs from holding ownership interests in extractive companies, nor are there any declaration systems in place that would reveal such practice. Burkina Faso's scoping study notes that there are reporting obligations for PEPs and concludes that "It may therefore be envisaged that the authority receiving the declaration of assets held by politicians, as mandated by law, may eventually provide the declaration of any form of property that politicians hold in the extractive companies" (p. 35).

Where disclosures of assets held by PEPs are mandatory, the EITI Report could provide details on actual disclosure practice, including whether the information is publicly accessibility. Where there are legal requirements but no disclosure framework in place, the EITI could contribute to disclosures related to extractive assets. Countries may decide that, for PEPs who are beneficial owners, information should be disclosed regardless of thresholds.

Disclosure of PEPs as beneficial owners should ideally include some contextual information around the position and role of the PEP as well as information about when the PEP acquired ownership/control of the extractive asset. Implementing countries could be encouraged to ask companies to disclose the names of Board members. While not necessarily beneficial owners, such disclosures could help shed light on cases where proxies are used to conceal that e.g. a PEP is a beneficial owner.

### ***Box 4 – Definitions of Politically Exposed Persons***

#### **The 4<sup>th</sup> EU Money Laundering Directive:**

(9) 'politically exposed person' means a natural person who is or who has been entrusted with prominent public functions and includes the following:

- (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.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials;

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

#### **Financial Action Task Force**

*Foreign PEPs* are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials,

senior executives of state owned corporations, important political party officials.

*Domestic PEPs* are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

*Persons who are or have been entrusted with a prominent function by an international organisation* refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.

The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

#### **United Nation Convention Against Corruption**

Article 52: "Individuals who are, or have been, entrusted with prominent public functions, and their family members and close associates."

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

Source: [Glossary of the FATF Recommendations](#)

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

## 4.5 Consider the level of detail to be disclosed

The EITI Standard states that the beneficial ownership disclosures "...should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted" (Requirement 2.5.c). It further states that the "Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed" (Requirement 2.5.d).

The [EITI model beneficial ownership declaration form](#) asks for all the information listed in requirement 2.5.d. It also asks companies to indicate in what way ownership and control is exercised, whether by shares, voting rights or other means in line with requirement 2.5.c. **It is recommended that the roadmap includes activities aimed at consultation with government, civil society and companies with regards to the level of additional detail of the beneficial ownership disclosures, including opportunities and challenges with disclosing recommended information such as date of birth and means of contact. The roadmap could also specify whether the multi-stakeholder group intends to make use of the EITI's model beneficial ownership declaration form, perhaps with some local adaptations, or whether the multi-stakeholder group intends to develop its own declaration form.**

### ***Lessons learnt from the pilot – level of detail***

Where beneficial ownership was disclosed, this often included some detail on how ownership was exercised. In some cases, this detail was limited to expressing ownership as 'percent of participation' without making it clear whether ownership control was exercised through shares, voting rights, or through

other means. Zambia's beneficial ownership report provides useful detail by specifying both the number of

shares and the percentage of voting rights. DRC's 2013 EITI Report also in a number of cases identified the percentage of both indirect and direct voting rights that the beneficial owners exercise. Guidance to companies on how to fill in the declaration form was crucial in order to obtain the level of detail requested.

## 4.6 Consider data collection procedures

Requirement 2.5.c states “As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information **for inclusion in the EITI report**” (emphasis added). Requirement 2.5.a also states “It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information”.

In considering data collection procedures, it is important to note that the requirement for beneficial ownership disclosure extends to any company that “bid for, operate, or invest in extractive assets” (Requirement 2.5.c). This means that the multi-stakeholder group will in all likelihood need to target more companies for beneficial ownership disclosure than those that are considered material for financial EITI reporting purposes. **It is recommended that the roadmap includes actions aimed at identifying the companies that will be required to participate in beneficial ownership reporting. The roadmap could also include consultation activities aimed at identifying the most efficient and sustainable data collection approach.** This may include distributing beneficial ownership declaration forms to all eligible companies, or incorporate beneficial ownership disclosure requirements in existing disclosure obligations upon bidding, in annual corporate filings etc. Although all companies will eventually need to disclose their beneficial owners, countries with large and complex extractive sectors might wish to prioritise and target the most important companies first depending on local context, and incrementally extend reporting with a view to cover all companies by 2020.

## 4.7 Consider how to develop a methodology for assuring the accuracy of the data

The EITI Standard states “The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation” (Requirement 2.5.e). It is important for the credibility of the EITI’s work on beneficial ownership that there is some mechanism for assuring the accuracy of the information disclosed otherwise it will not be possible to have confidence that the beneficial owners that have been disclosed are the true beneficial owners and not a substitute, nominee or proxy. The mechanism for ensuring data reliability need not necessarily require formal legal enforcement, although that remains an option, since with the provision of publicly available information, other stakeholders such as law enforcement agencies, civil society and other companies may be in a position to challenge suspect information.

**The multi-stakeholder group should make sure that the roadmap outlines any actions that the multi-stakeholder group intends to discuss and agree on prior to data collection regarding an appropriate mechanism for companies to assure the data in the beneficial ownership declarations, in particular in countries where beneficial ownership disclosure is not required by law.** A standard declaration that a senior company official is asked to sign to confirm that the information submitted is correct appears to be a practical mechanism, which is reflected in the model beneficial ownership declaration form. Disclosing

the name and position of the person providing the attestation could be considered. Where deemed necessary, companies could also be asked to submit supporting documentation (articles of association, powers of attorney, etc.). Certain beneficial ownership declarations could also be crosschecked against the information provided in local corporate filings or information filed under disclosure requirements for government officials, where available.

#### 4.8 Consider data timeliness

EITI Requirement 4.8 related to data timeliness states that “Implementing countries must disclose data no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2016 must be based on data no later than calendar/financial year 2014. Multi-stakeholder groups are encouraged to explore opportunities to disclose data as soon as practically possible, for example through continuous online disclosures or, where available, by publishing additional, more recent contextual EITI data than the accounting period covered by the EITI revenue data”.

Although the beneficial ownership requirements are silent on data timeliness, **it is recommended that the roadmap includes activities aimed at exploring what would be the most appropriate time for data collection of beneficial ownership information.** For example, it might be appropriate for companies to file such information upon incorporation in the country, when bidding for extractive licenses, when signing a contract or a license, or when submitting regular annual reports on its extractive activities. The model beneficial ownership declaration form tasks reporting entities with confirming owners as per a specific date to be determined by the MSG. It also requests that each company disclose the date that the beneficial interest of its owners was acquired.

**The multi-stakeholder group might also wish to consider how to reflect changes in ownership over time, once a baseline has been established.** A practical approach might be to require companies to disclose beneficial ownership once. Further disclosures would only be provided as beneficial ownership changes, rather than at regular fixed intervals. Where legal and regulatory reforms are taking place to facilitate beneficial ownership disclosure, this could include require companies to disclose any changes to beneficial ownership and identify-related information within a certain number of days.

#### ***Lessons learnt from the pilot – data timeliness***

One of the challenges revealed in the pilot was the lack of clarity on what point in time the beneficial ownership data refers to, i.e. whether the names listed are the beneficial owners as per the date of publication of the EITI Report, or whether the information dates further back, e.g. as per the time of data collection for the EITI Report, or per the end of the financial year covered by the EITI Report.

Zambia’s report clearly indicated that the validity of the beneficial ownership information disclosed, e.g. that the names listed are the beneficial owners as of 31 December 2014. DRC is the only country that seems to have been able to collect information from beneficial owners on when their ownership interest was acquired.

## 4.9 Consider data accessibility

EITI Requirement 7.2 on data accessibility states that “the multi-stakeholder group is encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data by adopting Board-approved EITI data standards”. The Standard also requires the multi-stakeholder group to “make the EITI Report available in an open data format (xlsx or csv) online and publicise its availability” (Requirement 7.1.c”).

Tables with beneficial ownership information locked in a pdf might be difficult to understand and interpret, in particular when there are multiple layers of companies between the company that operate in the extractive sector and the ultimate beneficial owner. **It is recommended that the roadmap includes activities aimed at increasing data accessibility, for example by publication of data in electronic formats. This could also include activities aimed at considering establishing a public beneficial ownership register, ideally integrated in existing corporate or extractive license holder registers.** While the EITI pilot on beneficial ownership revealed that beneficial ownership information is typically not collected by government agencies, understanding of the legal requirements and information contained in existing company registers was a useful starting point for multi-stakeholder groups that are interested in establishing public beneficial ownership registers and mainstreaming such disclosures.

### 4.10 Consider capacity building needs

Requirement 1.5.c.i of the EITI Standard requires the multi-stakeholder group to “Assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation.”

Experience with beneficial ownership disclosures shows that there is considerable lack of awareness and experience with beneficial ownership across all stakeholders. The lack of distinction between legal and beneficial ownership has caused considerable confusion, preventing comprehensive and accurate disclosure in the beneficial ownership reports. **It is recommended that the multi-stakeholder group considers including capacity building and awareness raising campaigns in its roadmap, or actions aimed at identifying capacity building needs. In many countries, it may be necessary to start with a simple awareness raising campaign in order to explain what beneficial ownership is all about.** This could be complemented with more technical capacity building for relevant government agencies, for example related to law enforcement related to beneficial ownership, establishment and maintenance of a beneficial ownership register, verification mechanisms, communication with companies etc. Capacity building for companies might be needed in order to ensure familiarity with beneficial ownership reporting, guidance on identifying and collecting initial beneficial ownership information, as well as procedures and systems for updating and submitting data to government authorities. Capacity building for civil society could focus on public monitoring of beneficial ownership data and changes over time, how to use beneficial ownership information in advocacy and campaigns, etc.

### 4.11 Consider needs for technical and financial assistance

Requirement 1.5.d of the EITI Standard requires the multi-stakeholder group to “Identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed work plan.” **It is recommended that the multi-stakeholder group early on identifies funding for the implementation of the roadmap. The roadmap might also include cost**

estimates for the activities and indicate how these will be funded. The MSG might also wish to include any actions aimed at securing further funding for implementation of the beneficial ownership requirement, and indicate for which activities the multi-stakeholder group will need technical assistance.

#### 4.12 Consider deadlines and responsibilities for roadmap activities

The EITI Standard states that “The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG’s annual activity report” (Requirement 2.5.b.ii). **It is recommended that the roadmap includes measurable and time bound activities, and that the roadmap assigns responsibilities for the various activities. The multi-stakeholder group may wish to consider establishing a working group or committee to oversee the development and execution of the roadmap, and to present regular progress reports to the government and the multi-stakeholder group.** The roadmap must be endorsed by the multi-stakeholder group and made publicly available no later than 1 January 2017.

### 5. Further reading

- EITI, *Beneficial ownership pilot evaluation report*, [https://eiti.org/files/BP/board\\_paper\\_30-4-b\\_beneficial\\_ownership\\_pilot\\_-\\_evaluation\\_report.pdf](https://eiti.org/files/BP/board_paper_30-4-b_beneficial_ownership_pilot_-_evaluation_report.pdf)
- EITI, *Beneficial ownership fact sheet 2016*, <https://eiti.org/document/beneficial-ownership-fact-sheet>
- EITI, *Beneficial ownership model declaration form*, <http://eiti.org/files/Template%20beneficial%20ownership%20declaration%20form.doc>
- Financial Action Task Force, *Guidance on Transparency and Beneficial Ownership*, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>
- NRGI, *Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies*, [http://www.resourcegovernance.org/sites/default/files/documents/nrgi\\_beneficial\\_owners20150820.pdf](http://www.resourcegovernance.org/sites/default/files/documents/nrgi_beneficial_owners20150820.pdf)
- Official Journal of the European Union, *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>
- Global Witness, *Anonymous company owners*, <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/>
- Global Financial Integrity, *Anonymous companies*, <http://www.gfintegrity.org/issue/anonymous-companies/>
- UK Department for Business Innovation & Skills, *Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business: Consultation paper*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business.pdf)
- UK Department for Business Innovation & Skills, *Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business: Government response*,

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf)

- UK Department for Business Innovation & Skills, *Consultation stage impact assessments*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/303555/bis-14-670-part-a-of-transparency-and-trust-proposals-impact.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303555/bis-14-670-part-a-of-transparency-and-trust-proposals-impact.pdf)

## Annex A: Advisory checklist for beneficial ownership roadmap

### Institutional framework for beneficial ownership disclosure

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- consultations with government agencies in order to identify the agency(ies) that is responsible or could best suited to oversee, collate and maintain beneficial ownership information?
- reviewing any legal, regulatory or practical barriers to disclosure of beneficial ownership?
- undertaking legal reviews and amendments with a view to incorporate requirements for beneficial ownership disclosure in relevant law(s)?

### Beneficial ownership definitions

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- reviewing whether national laws include a definition of beneficial owners?
- reviewing existing international definitions and definitions used in other countries?
- agreeing an appropriate definition and ownership thresholds in order to operationalize reporting of beneficial ownership?

### Politically exposed persons

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- investigating existing national definitions and reporting requirements for PEPs with a view to align the beneficial ownership definition accordingly?

### Level of disclosure details and data reliability

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- consultation with government, civil society and companies with a view to determine the level of detail of the beneficial ownership disclosures (nationality, country of residence, level of ownership, how ownership is exerted, date of birth, residential address, means of contact, etc.), including opportunities and challenges with such disclosures ?
- identifying an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection?

### Data timeliness

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- reviewing what would be the most appropriate time for data collection of beneficial ownership information ?
- how to reflect changes in ownership over time, once a baseline has been established?

**Data collection procedures and data accessibility**

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- identifying the companies that will be required to participate in beneficial ownership reporting?
- identifying the most efficient and sustainable data collection approach, including for example developing a beneficial ownership declaration form, or adaptation of the EITI's model beneficial ownership declaration form as tools for collecting beneficial ownership data?
- increasing data accessibility, for example by publication of data in electronic or other open data formats?
- considering establishing a public beneficial ownership register, ideally integrated in existing corporate or extractive license holder registers?

**Capacity building, and technical and financial assistance**

*Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...*

- capacity building and awareness raising campaigns, and/or actions aimed at identifying capacity building needs ?
- identifying funding for the implementation of the roadmap and further funding for implementation of the beneficial ownership requirements on an ongoing basis ?

**Deadlines and responsibilities for roadmap activities**

*Has the multi-stakeholder group made sure that the roadmap..*

- includes measurable and time bound activities ?
- assigns responsibilities for the various activities?
- estimates the cost of the activities and identifies funding sources?
- considers whether it is necessary to establish a working group to oversee the development and execution of the roadmap ?