Extractive Industries Transparency Initiative (EITI)
EITI Requirements on State-Owned Enterprises (SOEs)

Anglophone Africa Webinar on SOE requirements
Outline

■ Why is SOE transparency important?
■ Requirement 2.6 on state participation
■ Requirement 4.5 on SOE transactions
### Key SOE risks

State-owned enterprises present key governance risks in the extractive industries.

#### Figure 4: Five major risks posed by SOEs and their direct causes

<table>
<thead>
<tr>
<th>Risk</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Risk 1: Slow project development</strong></td>
<td>Weak licensing practices, Weak property rights, Hiring based on patronage rather than abilities, Underinvestment in exploration and production</td>
</tr>
<tr>
<td><strong>Risk 2: High costs</strong></td>
<td>Overemployment, Poor procurement practices, Overindebtedness, Quasi-fiscal responsibilities, Environmental and social impacts</td>
</tr>
<tr>
<td><strong>Risk 3: Low revenues</strong></td>
<td>Tax incentives and exemptions, Below market return on sale of assets, Weak tax collection</td>
</tr>
<tr>
<td><strong>Risk 4: Inefficient allocation of revenues between SOEs and other public entities</strong></td>
<td>Excessive revenue retention, Underinvestment, Quasi-fiscal expenditures</td>
</tr>
<tr>
<td><strong>Risk 5: Financial liability to taxpayers</strong></td>
<td>Excessive liabilities, Overinvestment</td>
</tr>
</tbody>
</table>
**Valeur de la transparence des entreprises d’État ?**

**For SOEs’ management:**
- Public accountability in SOEs’ fulfilment of their dual mandate (corporate and socio-economic).
- To demonstrate to government owners the status of implementation of ongoing and past reforms.
- To improve communications with investors and facilitate access to credit and/or equity.
- As a basis for benchmarking against peers’ financial and corporate governance performance.

**For government:**
- To understand whether their revenues from SOEs is in line with the company’s performance.
- To apprehend the opportunity-costs of the SOE’s dual mandate.
- As a basis of evidence on which to base reforms, either towards socio-economic or corporatisation targets.

**For extractives companies:**
- To help reduce counter-party risk in private companies’ business partnerships with SOEs.
- To ensure clarity in the investment climate when companies often have to partner with SOEs.
- To improve communications with shareholders and facilitate access to credit and/or equity.

**For civil society:**
- SOEs manage a large share of extractives revenues on behalf of citizens – their financial management matters.
- SOEs to meet minimum levels of transparency on which CSOs can base future research and advocacy.
- Opportunity through the MSG to work with SOEs on further disclosures.
SOE transparency has been a weakness in the first round of Validations, but is getting better in second Validations.

Disclosures of commodity sales more granular.

Publication of audited financial statements emerging norm.
Requirement 2.6

State participation in the extractive industries
Requirement 2.6 - Definitions

Requirement 2.6.a.i: “For the purpose of EITI implementation, a state-owned enterprise (SOE) is a wholly or majority government-owned company that is engaged in extractive activities on behalf of the government. Based on this, the multi-stakeholder group is encouraged to discuss and document its definition of SOEs, taking into account national laws and government structures.”

Key aspects of the definition:

- Majority-owned by government (i.e. 50% + 1 share);
- Primarily engaged in the extractive industries on behalf of government (i.e. Holding extractives licenses, holding equity in extractives companies).
SOE definitions

- Nigeria
- Papua New Guinea
- United Kingdom

In Nigeria, the sole oil and gas SOE is NNPC.

In the UK, the OGA is considered a regulator, not a SOE.

In PNG, Kumul Consolidated Holdings is the government’s asset management company. It was considered a SOE but could have been excluded.
In Norway, Equinor (ex-Statoil) is 67% owned by the Norwegian Government.

In Zambia, the MSG has adopted the same definition as in the EITI Standard. This resulted in the selection of four companies, two of which were subsidiaries of ZCCM-IH.

3.8.1.1 ZCCM-IH

For the purpose of EITI implementation, a SOE is a wholly or majority government-owned company that is engaged in extractive activities on behalf of the government. We understand that ZEC did adopt a definition of SOEs. We have identified the following SOEs and subsidiaries of SOE:

In Ethiopia, the MSG listed three companies that were part-state owned in the mining sector, only one majority state-owned.

In Mongolia, the mining SOE Erdenes Mongol holds equity in mining companies on behalf of the state. The mining companies as well as the holding group were included in the scope of EITI disclosures.

### Table 16: List of state participations in the mining sector

<table>
<thead>
<tr>
<th>N°</th>
<th>Companies</th>
<th>N°</th>
<th>Name/Entity</th>
<th>Level of ownership</th>
<th>Nationality of the shareholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MERGO Gold Hire Pte Ltd</td>
<td>1</td>
<td>Ministry of Finance &amp; Economic Cooperation, State of Mohammed</td>
<td>20%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>Shelal Al-Amin Affairs, Saudi Salah Al-Amin</td>
<td>80%</td>
<td>Saudi Arabian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>Shelal Al-Amin Affairs, Saudi Salah Al-Amin</td>
<td>20%</td>
<td>Saudi Arabian</td>
</tr>
<tr>
<td>2</td>
<td>Aljira Steel Soda Ash Sc</td>
<td>1</td>
<td>Ethiopian Public Enterprise and Administration</td>
<td>30%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>National Mining Corporation Pte Ltd</td>
<td>20%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>Sida Hussien Ali</td>
<td>10%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>Hassan H. Al-Amin</td>
<td>9.4%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>Abdulah H. Al-Amin</td>
<td>9.4%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td>3</td>
<td>Afar Salt Production Sc</td>
<td>1</td>
<td>State-Owned Government</td>
<td>83.33%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>Sayaa Production Development PLC</td>
<td>3.8%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>Sala Dimensional Stones PLC</td>
<td>11.67%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4</td>
<td>Guna Trading PLC</td>
<td>1%</td>
<td>Ethiopian</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5</td>
<td>Ato Tewodros Hayes</td>
<td>0.02%</td>
<td>Ethiopian</td>
</tr>
</tbody>
</table>
Requirement 2.6 - Materiality

Requirement 2.6: “Where state participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose:...”

Key aspects of assessing materiality:

- Do SOEs collect any revenues (in cash or in-kind) from private companies or extractives subsidiaries/joint-ventures? What is the value of these revenues?
- Do SOEs make payments or transfers to the government? What is the value of these payments/transfers?
- The MSG can set a materiality threshold for selecting material SOEs.
**Materiality of SOEs**

In Burkina Faso, there are three SOEs but the materiality of their revenues is arguable (e.g. 0.01% of extractive revenues).

In Nigeria, NNPC lifts over 35% of total oil production on behalf of government.

In Mongolia, four extractive SOEs paid dividends to government in 2016. The MSG’s low materiality threshold meant that they were all considered material for EITI reporting.
Iraq: National Oil Companies

While national oil companies in Iraq make only one type of payment to government (45% of Iraq’s NOC net profits is usually not material), the SOEs are considered material in terms of exploration, production and receiving material transfers (Internal Service Payments).

Ministry of Oil
- Internal service payments
  - Transfer of SOEs’ 45% of profit to Treasury

International Oil Companies under service contract
- In-kind oil transfers

National Oil Companies (NOCs)
- In-kind oil transfers
- In-kind gas transfers

National Refinery Companies
- In-kind oil transfers

National Electricity Generation Directorates
- In-kind oil transfers

National Gas Companies
- In-kind gas transfers

Other state-owned enterprises
- Ad-hoc transfers and loans to other SOEs

Domestic petroleum transfers are valued based on the Ministry of Oil’s accounting petroleum price
Requirement 2.6 – Level of ownership

Requirement 2.6.a.ii: “Implementing countries must disclose (...) disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country’s oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures (...) This information should include details regarding the terms attached to their equity stake, including their level of responsibility for covering expenses at various phases of the project cycle, e.g. full-paid equity, free equity or carried interest.”

Key aspects for mapping state participation:

- What are the government’s direct equity interests in extractives companies?
- What are SOEs’ equity interests in subsidiaries, joint-ventures and other extractives companies?
- What are SOEs’ participating interests in PSCs and other extractives projects?
- What are the terms associated with each of the equity interests held by the state or SOE?
Kazakhstan: State participation

The complexity of the structure of SOEs and subsidiaries calls for a comprehensive picture of all SOEs and their subsidiaries.
The terms associated with equity determine the duties and responsibilities of the shareholder. For instance, they define the shareholder’s (state’s or SOE’s) level of responsibility for covering expenses at various phases of the project cycle. They can consist of:

- **Full equity**: equity on commercial terms. The shareholder is responsible for cover its share of expenditures (opex and capex) in line with its equity interest.

- **Free equity**: The state’s or SOE’s responsibility for covering its share of expenditures (opex and capex) in line with its equity interest is covered by the operator. The state’s or SOE’s equity is in effect ‘free’, since the state or SOE is not responsible for funding its equity interest.

- **Carried interest**: The state’s or SOE’s responsibility for covering its share of expenditures (opex and capex) in line with its equity interest is covered by the operator during the development phase. The operator is then reimbursed once the project is operational/profitable. The state’s or SOE’s equity interest is in effect ‘carried’ by the operator.
Common risks in SOE ownership

There are common challenges in SOEs maintaining subsidiaries and joint-ventures, sometimes in offshore jurisdictions, that handle key profit-making activities yet retain earnings from the SOE group. For instance:

- **In Nigeria**, five of NNPC’s trading joint ventures handle part of the oil sales, domiciled in Bermuda and Panama. Clarity on the financial relations between those subsidiaries and the NNPC group is important.

- **In the Republic of Congo**, the refinery subsidiary CORAF of the national oil company SNPC receives allocations of around 6m barrels a year of crude oil without paying for them.

- **In Papua New Guinea**, sovereign loans have been transferred to SOE subsidiaries whose debt is not guaranteed by government.
State ownership in EITI countries

In Nigeria, the NNPC website lists the subsidiaries and affiliates of NNPC, but does not describe the terms associated with NNPC equity in each.

In Tanzania, the EITI Report describes the terms associated with TPDC equity in four oil and gas companies and projects.

In Tanzania, the EITI Report describes the terms associated with TPDC equity in four oil and gas companies and projects.

In Zambia, the state-owned ZCCM-IH holds equity interests in mining companies on behalf of government.

In Mozambique, ENH has multiple subsidiaries and affiliates.
Requirement 2.6 – Changes in ownership

Requirement 2.6.a.ii: “Implementing countries must disclose (...) disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country’s oil, gas and mining sector (...) and any changes in the level of ownership during the reporting period. (...) Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues.”

Key aspects for mapping changes in state ownership:

- What have been the changes in state or SOE ownership in extractives companies during the year under review?
- What were the terms of the transaction for each change in state or SOE ownership in the year under review? I.e. What was the valuation of the equity interest? What consideration was paid?
Disclosures of changes in ownership

- Indonesia
- Kazakhstan
- Ghana

### Table 1. Share of Petroleum by Jubilee Partners

<table>
<thead>
<tr>
<th>Company</th>
<th>Share before Redetermination</th>
<th>Company</th>
<th>Share after Redetermination</th>
</tr>
</thead>
<tbody>
<tr>
<td>GNPC</td>
<td>13.7500%</td>
<td>GNPC</td>
<td>13.6408%</td>
</tr>
<tr>
<td>Tullow</td>
<td>36.4547%</td>
<td>Tullow</td>
<td>35.4795%</td>
</tr>
<tr>
<td>Kosmos</td>
<td>22.4913%</td>
<td>Kosmos</td>
<td>24.0371%</td>
</tr>
<tr>
<td>Anadarko</td>
<td>22.4913%</td>
<td>Anadarko</td>
<td>24.0710%</td>
</tr>
<tr>
<td>Sabre</td>
<td>2.8127%</td>
<td>PetroSA</td>
<td>2.7254%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Ghana’s PIAC Reports

### Table 3: Changes in ownership of working areas of PT Pertamina (Persero)

<table>
<thead>
<tr>
<th>No</th>
<th>Name of Block/Company</th>
<th>Transaction</th>
<th>Share Ownership / Participating Interest</th>
<th>Price</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Etablissments Maurel et Prm SA (M&amp;P)</td>
<td>Acquisition of Participating Interest (PI)</td>
<td>24.53% of shares</td>
<td>US$227 million</td>
<td>Effective from August 25, 2016</td>
</tr>
<tr>
<td>2</td>
<td>East Ambolat</td>
<td>Acquisition of Participating Interest (PI)</td>
<td>100%</td>
<td>No information</td>
<td>Effective from May 25, 2016 with a term of 30 years</td>
</tr>
<tr>
<td>3</td>
<td>WKP Gunung Lawu</td>
<td>Acquisition of Participating Interest (PI)</td>
<td>100%</td>
<td>No information</td>
<td>Effective from January 11, 2016</td>
</tr>
</tbody>
</table>


### Table 4. Shares of participation of Samruk-Kazyna National Welfare Fund JSC in companies

<table>
<thead>
<tr>
<th>No</th>
<th>Name of Company</th>
<th>Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>JSC National Company KazMunayGas (&quot;NC KMG&quot;) and subsidiaries</td>
<td>90.09% - 1</td>
</tr>
<tr>
<td>2</td>
<td>KMKG Kashagan B.V.</td>
<td>100.00%</td>
</tr>
<tr>
<td>3</td>
<td>&quot;National Company&quot; Kazakhstan Temir Zholy&quot; JSC (&quot;NC KTZh&quot;) and subsidiaries</td>
<td>100.00%</td>
</tr>
<tr>
<td>4</td>
<td>&quot;National Atomic Company&quot; KazAtomProm&quot; JSC (&quot;NAK KAP&quot;) and subsidiaries</td>
<td>100.00%</td>
</tr>
<tr>
<td>5</td>
<td>JSC &quot;National Mining Company&quot; Tau-Ken Samruk&quot; and subsidiaries</td>
<td>100.00%</td>
</tr>
</tbody>
</table>


In February 2017, Samruk-Kazyna NWF JSC acquired a participation share in the amount of 0.0881% in NC KMG by contributing to the share capital with property in the amount of KZT 12,969 million, the non-controlling stake in KMG decreased by 4.768 million tenge.

Source: Kazakhstan’s 2017 EITI Report, p.76.
Common risks in changes in SOE ownership

Some common challenges in changes in state participation include:

- Opaque transfer of assets to SOE subsidiaries, e.g. transfer of NNPC assets to NPDC in 2011-2014 in Nigeria;
- Opaque transfer of assets of SOE joint-ventures to private companies without clarity on compensation, e.g. Gécamines joint-ventures in the DRC.
- Incomplete restructuring of SOE holding structures, e.g. Kumul Holdings in PNG.
Madagascar’s state-owned Kraoma created a 20/80 (later 30/70) joint-venture with Ferrum Mining (part of Russian-owned Stork Int.), named Kraoma Mining JV.

This company was meant to be capitalised by USD 16m from the Russian investor and 3 licenses from the state (and in-kind equipment). In the end, USD 6m was invested. The company is in the process of being wound up.

More broadly Kraoma is mired in scandal with its former DG arrested on charges of embezzlement of funds and stolen chromium in January 2020.
Requirement 2.6 – Statutory financial relations

Requirement 2.6.a.i: “Implementing countries must disclose (...) an explanation of the role of state-owned enterprises (SOEs) in the sector and prevailing rules and practices regarding the financial relationship between the government and SOEs, i.e. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. This should include disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries.”

Key aspects of statutory financial relations:

- Is the SOE entitled to receive budget transfers or subsidies?
- Can the SOE’s Board of Directors decide on its own dividends?
- Can the SOE retain earnings?
- Can the SOE reinvest in its operations?
- Can the SOE seek third-party financing (either debt or equity)?
What is third-party financing?

Third-party financing is funding for the SOE that does not come from its own resources (e.g. retained earnings) or from its shareholders (e.g. the government). It is financing from a third source (e.g. a private company, or bank), either through debt or equity.

- **Debt**: Debt is an amount of money borrowed by the SOE from another entity. It can be through bank loans, lines of credit, the issuance of bonds or Eurobonds. Debt has a maturity (length of time) and an interest rate (or coupon in the case of bonds). The question is whether the SOE has the statutory right to raise debt (e.g. bank loans or bonds).

- **Equity**: Equity is the SOE’s assets after liabilities have been deducted. It represents a share of ownership in the SOE, rather than a debt that is due to be repaid. Equity is typically issued to investors through shares. The question is whether the SOE has the statutory right to raise funding through equity (e.g. by issuing shares to outside investors).
Common risks in SOEs’ statutory financial relations

There are common challenges related to SOEs’ financial relations with government. For instance:

- In **Myanmar**, government has focused on reforming the SOEs’ statutory rights to retain a significant share of earnings (up to 50% of oil and gas revenues) while receiving government subsidies.

- In **Nigeria**, disagreements between NNPC and NEITI focus on whether the SOE has the statutory right to retain earnings. NNPC does not pay dividends to government in practice, e.g. it retains the NLNG dividends.

- In **Senegal**, the question of PETROSEN’s statutory rights to secure third-party financing will be key to developing the country’s large gas reserves.
In Ghana, all oil and gas revenues are transferred to the PHF, with budget transfers to GNPC as its share of revenues (CAPI).

In Tanzania, the report describes TPDC’s retained earnings and transfers received from government.

<table>
<thead>
<tr>
<th>Table 12: TPDC Participation in the Oil and Gas Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company/project participation with state ownership of SOE</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>GASCO</td>
</tr>
<tr>
<td>CONOCO</td>
</tr>
<tr>
<td>Sonangol Gas Project</td>
</tr>
<tr>
<td>East Line Gas project</td>
</tr>
</tbody>
</table>

In PNG, the dividend structure of SOE OK Tedi, which includes landowners.

In Colombia, Ecopetrol’s statutory financial relations with government are described on its website.
Requirement 2.6 – Financial relations in practice

Requirement 2.6.a.i: “Implementing countries must disclose (...) an explanation of the role of state-owned enterprises (SOEs) in the sector and prevailing rules and practices regarding the financial relationship between the government and SOEs, i.e. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. This should include disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries.”

Key aspects of financial relations in practice:

- Did SOE receive any budget transfers or subsidies in the year under review? Value?
- Did the SOE pay any dividends in the year under review? Value?
- Did the SOE retain earnings in the year under review? Value?
- Did the SOE reinvest in its operations in the year under review? Value?
- Did the SOE have any third-party financing (either debt or equity) in the year under review? Value?

Overall, were the SOE’s financial relations with government in line with the rules in the year under review?
Common challenges in SOEs’ financial relations in practice

The basis for a comprehensive review of SOEs’ financial relations with government in practice should be the SOE’s audited financial statements, although these are not always available.

In many countries, SOEs’ financial relations in practice are not in line with the prevailing rules and regulations. For instance:

- In the DRC, GECAMINES has different arrangements for its joint ventures, which deviate from statutory rules.
- In Iraq, SOEs’ profit-sharing (dividends) differ substantially from the rules given financial difficulties of some SOEs.
- In PNG, the state’s equity interest in the PNG LNG project has not yielded the expected proceeds to government.
SOE financial relations with the state: Republic of Congo

Mapping allocations of in-kind oil revenues in the Republic of Congo

In USD for the 2017 fiscal year

International Oil Companies

27m barrels
State share of in-kind oil revenues
in-kind royalty and profit-oil payments
from oil companies to SNPC

National Oil Company
SNPC (Société Nationale des Pétroles du Congo)

26% - USD 338m

Chinese Escrow Account
Reimbursement of China Exim Bank for infrastructure loans

Commodity Traders
Pre-financing reimbursements to
oil traders Trafigura and Glencore

State-Owned Refinery
CORAF

4.6m barrels
Lifted directly by ENI to reimburse
building of a power plant

19% - USD 243m
5m barrels
no evidence of payments

National Treasury
Ministry of Economy, Industry
and Public Finance

10% - USD 127m

Eni

19% - USD 242m

Allocation of in-kind oil revenues in Republic of Congo
in USD for the 2017 fiscal year

International oil companies 71m bbl 72%
State share 27m bbl $1.2bn 28%

Infrastructure deals with China $338m 26%
Prefinancing reimbursements to traders $302m 24%
CORAF refinery $243m 19%
ENI powerplant $242m 19%
National Treasury* $127m 10%
Other** 2%

*Sales proceeds remitted to the Treasury by SNPC (USD 95m), in addition to the proceeds of the government in-kind share sales by Total (net of the maritime tax) according to their trading agreement
** Cost of state participation in Ynaga and Sendji oil fields
## Financial relations: Consider a table for consistency

<table>
<thead>
<tr>
<th>Budget transfer/subsidy</th>
<th>Dividends</th>
<th>Retained earnings</th>
<th>Reinvestment</th>
<th>Third-party financing (debt and equity)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statutory rules: SOE’s ability to:</strong></td>
<td>Cite specific legal or regulatory provisions.</td>
<td>Cite specific legal or regulatory provisions.</td>
<td>Cite specific legal or regulatory provisions.</td>
<td>Cite specific legal or regulatory provisions.</td>
</tr>
<tr>
<td><strong>Source &amp; assessment of reliability, comprehensiveness, disaggregation.</strong></td>
<td>Value of transfer in the year under review</td>
<td>Value of transfer in the year under review</td>
<td>Value of transfer in the year under review</td>
<td>Value of transfer in the year under review</td>
</tr>
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<td><strong>Source &amp; assessment of reliability, comprehensiveness, disaggregation.</strong></td>
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<td>Value of transfer in the year under review</td>
<td>Value of transfer in the year under review</td>
</tr>
</tbody>
</table>

SOE 1

| Source & assessment of reliability, comprehensiveness, disaggregation. | Value of transfer in the year under review | Value of transfer in the year under review | Value of transfer in the year under review | Value of transfer in the year under review |

SOE 2

| Source & assessment of reliability, comprehensiveness, disaggregation. | Value of transfer in the year under review | Value of transfer in the year under review | Value of transfer in the year under review | Value of transfer in the year under review |
Requirement 2.6 – Loans and guarantees

Requirement 2.6.a.ii: “Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed, including loan tenor and terms (i.e. repayment schedule and interest rate). Multi-stakeholder groups may wish to consider comparing loans terms with commercial lending terms.”

Key aspects of loans and guarantees:

- Did the state have any outstanding loans or loan guarantees to any extractives companies (including SOEs) or projects in the year under review?
- Did the SOE have any outstanding loans or loan guarantees to any extractives companies or projects in the year under review?
- What are the terms of each loan and guarantee identified? E.g. Tenor, repayment terms, interest rate.
- The MSG could compare the terms of these loans and guarantees to commercial loans.
Common risks in loans and guarantees to extractives

Transparency on state and SOE loans and guarantees to extractives projects and companies is key to understanding the state’s use of taxpayer funds to support extractives companies. Some of the risks include subsidising private commercial companies; patronage through preferential lending to politically-exposed persons; off-budget loans by SOEs that are not reflected in sovereign debt statistics, etc.

- In the Republic of Congo, SNPC has contracted debt worth 21% of GDP.
- In PNG, the issue of sovereign guarantees on SOEs in the mining, oil and gas sectors has been politically decisive.
- In Mozambique, while ENH debt declined from 8.4% of GDP in 2016 to 7% of GDP in 2018, it has started to rebound with recent loan guarantees.
Loans and guarantees

Loans granted to extractive companies

ZCCM-IH contributes to the direct financing of mining projects. According to the company financial reports, funding was granted to its subsidiaries operating in the mining sector; and the terms of the transactions can be summarised as follows:

Table 28: Loans granted by ZCCM-IH to extractive companies

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Terms of the transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Maamba Collieries Limited</td>
<td>On 17 June 2015, ZCCM-IH entered into an intercompany loan agreement for a cash advance of K254,45 million (US$26.345 million) as part of its contribution towards the implementation of the Integrated Mining Project and the establishment of the 300MW Thermal Power plant project. The loan attracts an interest rate of 6% per annum. The principal and interest accrued is repayable in 5 annual instalments commencing in one year after the commercial operational date of 31 December 2016.</td>
</tr>
<tr>
<td>2. Lubambe Copper Mines Limited</td>
<td>On 15 September 2012, ZCCM-IH entered into an intercompany loan agreement with Lubambe Copper Mines Limited, for cash call loan amounting to K850 million (US$76 million). The loan attracts an interest rate of Libor plus 5% and is not secured. The loan was to be repaid in twelve equal quarterly instalments, none of which was made. This loan is fully impaired.</td>
</tr>
<tr>
<td>3. Ndola Lime Company Limited</td>
<td>The total loans and advances due from Ndola Lime, including interests was K29 million (2015: K516 million) which is fully impaired. During 2017, ZCCM-IH resolved to convert a total of K659 million of the outstanding loans to equity. The advances are not secured over any Ndola Lime Company assets and ZCCM-IH has indicated that it will not demand immediate repayment of these advances.</td>
</tr>
<tr>
<td>4. Kariba Minerals Limited</td>
<td>On 10 December 2012, ZCCM-IH and Kariba Minerals Limited entered into an intercompany loan agreement for a cash advance of K16.43 (US$1.47) million. Repayment was to commence at the end of the 12 months from the date of disbursement and payable annually. The interest rate of 6% per annum. At 31 March 2016, no repayments had commenced. This loan is fully impaired</td>
</tr>
</tbody>
</table>

Requirement 2.6 – Financial statements

**Requirement 2.6.b:** “SOEs are expected to publicly disclose their audited financial statements, or the main financial items (i.e. balance sheet, profit/loss statement, cash flows) where financial statements are not available.”

**Key aspects to consider:**
- Does the SOE have financial statements? Are they audited?
- Are the SOE’s financial statements published? If not, is there a reason?
- If the SOE is resistant to publishing its financial statements, is it willing to publish a summary of its balance sheet and profit & loss statement?
SOE financial statements: Afghanistan

OPENING UP STATE PARTICIPATION IN AFGHANISTAN’S EXTRACTIVES SECTOR

Government of Afghanistan

Ministry of Mines and Petroleum

Ministry of Finance

30m USD/year

Through the EITI, these companies have audited and published their financial statements for the first time.

North Coal Enterprise

Operates its own mines and buys coal from independent miners. It sells this coal to the domestic market, in tiered pricing.

Afghan Gas Enterprise

Operates gas fields and supplies power producers in northern Afghanistan.

2017 SALES: Two million metric tons of coal for USD 40m

2017 SALES: 155,000 cubic metres of natural gas for USD 6.3m
SOE financial statements: Tanzania

- TPDC routinely publishes its audited financial statements.
- The latest financial statements highlight over USD 1bn in outstanding government loans to TPDC.
**Requirement 2.6 – Encouraged aspects**

**Requirement 2.6.c:** “Implementing countries are encouraged to describe the rules and practices related to SOEs’ operating and capital expenditures, procurement, subcontracting and corporate governance, e.g. composition and appointment of the Board of Directors, Board’s mandate and code of conduct.”

**Key encouraged aspects of Requirement 2.6:**

- What are the rules and practices related to the SOE’s expenditures management (operating and capital expenditures)?
- What are the rules and practices related to the SOE’s procurement?
- What are the rules and practices related to the SOE’s subcontracting?
- What are the rules and practices related to the SOE’s corporate governance? E.g.:
  - Composition of the Board of Directors
  - Appointment of the Board of Directors
  - Board of Directors’ mandate
  - Board of Directors and/or management’s Code of Conduct.
Common challenges in SOEs’ corporate governance

Some of the common challenges in SOEs’ corporate governance:

■ Use of operating expenditures to cover non-core spending, which can lead to patronage;

■ SOE procurement at different than commercial rates from companies owned by politically-exposed persons;

■ Political interference in the appointment of SOEs’ Board of Directors;

■ Lack of safeguards against conflict of interest of management or Board Directors in SOEs; etc
Targeted efforts in the DRC

PARTICIPATION DE L’ETAT & SITUATION SPÉCIFIQUE DES ENTREPRISES PUBLIQUES (EP)

A targeted effort in the DRC involves the participation of the state in the activities of public companies. The state holds a significant share in several companies, including SODIMCO SA, SONHYDROC SA, and GECAMINES SA. The participation rate varies from 50% to 100%, depending on the company.

Revue des Etats Financiers des EP

The financial review of the EPs reveals the state’s significant financial involvement. SODIMCO SA, GECAMINES SA, and VCMKMO are among the companies that receive substantial state support.

PARTICIPATION DE L’ETAT & SITUATION SPÉCIFIQUE DES ENTREPRISES PUBLIQUES (EP)

The image on the right illustrates the participation of the state in the EPs. The state’s participation is not only financial but also through the regulation and oversight of these companies, ensuring their compliance with the regulatory framework.
Requirement 4.5

State-Owned Enterprise (SOE) transactions
Common challenges in SOE transactions

Some of the common challenges related to SOE transactions include:

- Excessive profit retention by SOE subsidiaries and joint ventures;
- Lack of clarity on SOEs’ retention of extractives companies’ payments;
- Combination of large SOE retained earnings and government subsidies for the same SOEs;
- Lack of clarity on overall financial management by SOEs.
Requirement 4.5 – SOE transactions

Requirement 4.5: «The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of SOEs, including comprehensive and reliable disclosures of material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs.»
**Requirement 4.5 – SOE transactions**

**Key SOE transactions to consider:**
- Extractives companies’ transactions to SOEs;
- SOE subsidiaries transactions to the SOE group;
- SOE transactions to government (that are SOE-specific, such as dividends);
- SOE ad hoc transactions to other government entities;
- Government transfers to SOEs (e.g. Budget transfers, subsidies).

The MSG can consider separate materiality threshold for selecting SOE transactions for reconciliation.
State participation in the extractive industries
Mapping the fiscal relations between the state and extractives companies

- **Extractive company A**
  - State holds 5% free equity
  - Dividends expected

- **State Treasury**
  - State holds 10% carried interest
  - Dividends expected
  - State holds 51% full paid equity
  - State subsidies

- **State-owned enterprise A**
  - State holds 100% full paid equity
  - In-kind transfers
  - Dividends

- **SOE Subsidiary A**
  - Holds 75% full paid equity

- **SOE Subsidiary B**
  - Ad-hoc payments
  - Holds 100% full paid equity

- **State-owned enterprise B**
  - SOE retains 50% earnings

- **Extractive company B**
  - Dividends expected

- **State Treasury**
  - State subsidies

- **State-owned enterprise C**
  - Dividends expected
  - State holds 25% full-paid equity

- **SOE Joint Venture**
  - Holds 75%
**Company payments to SOEs**

**In the DRC**, SOEs collect extractive company payments, such as royalties, dividends, ‘pas de porte’ etc.

**In Cameroon**, the SOE SNH collects revenues from oil and gas companies, both on behalf of the government as SNH-Mandat and on its own behalf as SNH-Fonctionnement.

**In Zambia**, ZCCM-IH collects revenues (dividends) from its subsidiaries and affiliates, and subsequently makes payments and transfers to the state.

**In Tanzania**, the national oil company TPDC collects revenues from oil and gas companies and makes payments and transfers to government.
Transfers between SOEs and government

In **Ghana**, the sovereign fund PHF makes transfers to GNPC. These transfers should be comprehensively and reliably disclosed (e.g. reconciliation, audit procedures, etc.).

<table>
<thead>
<tr>
<th>Recipient Agency/Fund</th>
<th>2017</th>
<th>2018</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>GNPC</td>
<td>182,040,000</td>
<td>305,270,000</td>
<td>34.12</td>
</tr>
<tr>
<td>o/w Equity Financing</td>
<td>201,100,000</td>
<td>104,170,000</td>
<td>-49.38</td>
</tr>
</tbody>
</table>

In **Zambia**, dividend payments to ZCCM-IH and ZCCM-IH dividends to government are disclosed and reconciled.

<table>
<thead>
<tr>
<th>Dividends paid to ZCCM-IH</th>
<th>758.33</th>
<th>662.20</th>
<th>14.52%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price Participation Fees paid by KCM</td>
<td>552.04</td>
<td>662.20</td>
<td>-16.48%</td>
</tr>
<tr>
<td>Dividends paid by KMP</td>
<td>205.29</td>
<td>-</td>
<td>N/A</td>
</tr>
<tr>
<td>Dividends paid by ZCCM-IH</td>
<td>92.38</td>
<td>-</td>
<td>N/A</td>
</tr>
<tr>
<td>Dividends paid to ICD</td>
<td>69.21</td>
<td>-</td>
<td>N/A</td>
</tr>
<tr>
<td>Dividends paid to MoF</td>
<td>23.18</td>
<td>-</td>
<td>N/A</td>
</tr>
</tbody>
</table>

In **Afghanistan**, North Coal Enterprise made in-kind transfers to the National Intelligence Directorate.

In **PNG**, the SOE KPH paid 4 times more in advances on dividends than on dividends in 2015.

<table>
<thead>
<tr>
<th>No.</th>
<th>Entity</th>
<th>Location 1</th>
<th>Location 2</th>
<th>Year</th>
<th>Total Amount (PGK)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Traffic Department</td>
<td>Baghlan</td>
<td></td>
<td>1377</td>
<td>43,185</td>
</tr>
<tr>
<td>2</td>
<td>Administrative Affairs</td>
<td>Baghlan</td>
<td></td>
<td>1376</td>
<td>147,889</td>
</tr>
<tr>
<td>3</td>
<td>Legal Rights Directorate</td>
<td>Baghlan</td>
<td></td>
<td>1376</td>
<td>2,070</td>
</tr>
<tr>
<td>4</td>
<td>Attorney General Directorate</td>
<td>Baghlan</td>
<td></td>
<td>1377</td>
<td>548.40</td>
</tr>
<tr>
<td>5</td>
<td>Municipality</td>
<td>Baghlan</td>
<td></td>
<td>1376</td>
<td>1,062</td>
</tr>
<tr>
<td>6</td>
<td>Agriculture Directorate</td>
<td>Baghlan</td>
<td></td>
<td>1376</td>
<td>9,314</td>
</tr>
<tr>
<td>7</td>
<td>Ministry (Provincial Revenue Department)</td>
<td>Baghlan</td>
<td></td>
<td>1375</td>
<td>11,266</td>
</tr>
<tr>
<td>8</td>
<td>Intelligence Directorate</td>
<td>Baghlan</td>
<td></td>
<td>1375</td>
<td>257,705</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Revenue/payment stream</th>
<th>Amount (PGK)</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>PNG LNG equity distribution (by way of borrower restricted payments)</td>
<td>1,003,577.758</td>
<td>Oil Search pays dividends owned by KPH directly to JPMorgan. JPMorgan then pays KPH after they retain funds in accordance with the UES loan. In 2015, JPMorgan received PGK74,323,960 from Oil Search and paid KPH PGK34,807,036.</td>
</tr>
<tr>
<td>DPL 1 revenue (Oldies GTE)</td>
<td>13,091,133</td>
<td>Equity distributions from Oil Search shares</td>
</tr>
<tr>
<td>Equity distributions from Oil Search shares</td>
<td>34,807,038</td>
<td>Oil Search pays dividends owned by KPH directly to JPMorgan. JPMorgan then pays KPH after they retain funds in accordance with the UES loan. In 2015, JPMorgan received PGK74,323,960 from Oil Search and paid KPH PGK34,807,036.</td>
</tr>
<tr>
<td>Dividends paid to Treasury</td>
<td>86,400,000</td>
<td></td>
</tr>
<tr>
<td>Advance payment to the State, to finance the 2015 Budget</td>
<td>365,000,000</td>
<td></td>
</tr>
</tbody>
</table>