Terms of Reference

Beneficial Ownership Consultant, Myanmar

Firm selection

1. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- Transparency: oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator (IA), and published annually alongside other information about the extractive industries in accordance with the EITI Standard.

- Accountability: a multi-stakeholder group (MSG) with representatives from government, companies and civil society is responsible for overseeing the process and communicating the findings of the EITI reporting, and promoting the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business. The requirements for implementing countries are set out in the EITI Standard\(^1\). Additional information is available via [www.eiti.org](http://www.eiti.org).

The EITI Board agreed in February 2013 that following a period of testing and learning, the EITI should, in the future, require disclosure of beneficial ownership in oil, gas and mining companies operating in implementing countries.

With the adoption of the 2016 EITI Standard (Requirement 2.5), the EITI Board has agreed that by 1 January 2020, all implementing countries must ensure that corporate entities who bid for, operate or invest in extractives assets disclose the identity of their beneficial owners. In addition, any politically exposed persons who are beneficial owners must be identified. It was recommended that the beneficial ownership information is made available through public registers. In order to ensure that the necessary preparatory steps and reforms are undertaken, implementing countries were also required to agree and publish roadmaps for their beneficial ownership disclosures by 1 January 2017.

Further details about EITI Requirement 2.5 on beneficial ownership are available from [https://eiti.org/node/4922#r2-5](https://eiti.org/node/4922#r2-5).

The Myanmar EITI Multi-Stakeholder Group submitted a draft Beneficial Ownership Roadmap by January 1st 2017. This Roadmap was then updated in February 2017, and approved by the MSG on the 31st of March. The Roadmap outlines key stakeholders, legislation and challenges to implementing the EITI Beneficial Ownership Requirement in Myanmar, identifies a number of activities to be undertaken including a legal review, consultations, seminars and workshops, and commits to the establishment a beneficial ownership Subcommittee (or Task Force), under the MSG, and the recruitment of a dedicated staff to work on implementation of the Roadmap.

\(^1\) [http://eiti.org/document/standard](http://eiti.org/document/standard)
The World Bank has played a role in MEITI since the outset, providing technical support and funding for the establishment of the MEITI Office, Budget Department and for implementation of activities in the MSG Work Plan. On January 17th 2017, the Government of the Union of Myanmar signed a Grant Agreement with the WB for funding support to cover implementation of the MEITI Work Plan from 2017-2019.

2. Objective of the assignment
The objective of the assignment is to advise and support the MSG, and Myanmar Stakeholders to implement the Beneficial Ownership Roadmap in accordance with EITI Requirement 2.5.

1. Development of a Beneficial Ownership Work Plan which identifies a clear schedule for implementation of the Roadmap, parties responsible for implementation, technical resources needed and budget for each of the activities, and present this for MSG approval.
2. Advise and support the MSG on institutional and implementation arrangements for the Beneficial Ownership Work Plan, including engagement with key stakeholders, establishment of the Beneficial Ownership Task Force and staffing of the Beneficial Ownership Team.
3. Develop a Capacity Development and Communications Plan to support the implementation of the Beneficial Ownership Work Plan.
4. Design and conduct a pilot project to gather beneficial ownership data on extractive industries in Myanmar to be integrated into the 2nd and 3rd MEITI Reconciliation Reports which are due on March 31st 2018.
5. Support the Beneficial Ownership Task Force and the Beneficial Ownership Staff Team within the National Coordination Secretariat (NCS) to implement the Beneficial Ownership Work Plan.

Expected outputs from the project include:

- A Beneficial Ownership Work Plan including clear definition of institutional and implementation arrangements.
- A Beneficial Ownership Communications and Capacity Development Plan
- Data from the Beneficial Ownership Pilot Project to integrate into the MEITI Reports, and proposed formatting guidelines for the data’s presentation.
- Establishment of agreed BO Task Force and staff team to implement the Beneficial Ownership Work Plan.

3. Scope of work
The consulting firm (the “Consultant”) will be expected to undertake the following tasks:

1. Examine the MSG’s Roadmap and relevant documents in order to gain a clear understanding of the objectives and scope of Myanmar’s EITI implementation; review any national strategies, studies, media reports, and government statements related to the issue of beneficial ownership.

2. Undertake broad consultations with stakeholders identified in the Roadmap, in particular the members of the multi-stakeholder group as well as the government agencies involved in the management of the extractive industries and national corporate registries (in particular, Directorate of Investment and Company Registration, oil/gas/mining licensing and cadastral authorities, Myanmar Central Bank, and anti-corruption commission)) on how to implement the activities in beneficial ownership roadmap.
3. Based on the existing MEITI Beneficial Ownership Roadmap, and other relevant sources consulted during the research phase, produce a detailed Work Plan that outlines a clear schedule, institutional responsibility and budget for each of the activities. Specifically, the consultant should;

- Outline the logic, prioritization and sequencing of activities
- Identify the specific steps required for each activity
- Determine appropriate duration and scheduling of each activity
- Identify any necessary coordination and consultation bodies (committees, secretariat, staff etc) and proposed implementation arrangements for the workplan, and/or existing entities which should be expanded to assume a coordinating role
- Identify key human needs (staff and consultants) to fulfill the above recommendations, and draft terms of reference for these positions.

4. Identify financial needs and draft a detailed budget for workplan implementation, and mapping this budget to individual entities identified in the institutional and implementation arrangements. Based on the BO Workplan approved by the MSG, the consultant should support the MSG to establish and build the capacity of MEITI BO Task Force staff including:

- Networking among key stakeholders and development/budgeting of a communications plan.
- Development and implementation of a training plan, covering workshops, on the job training and mentoring to be given by the consultant him/herself.

5. In consultation with MSG, design a pilot project to gather beneficial ownership data on extractive industries in Myanmar. The project plan should include;

- A definition of Beneficial Ownership appropriate to the Myanmar context, taking into account internationally accepted legal definitions and consistent with EITI Standard Requirement 3.11(d)(i)
- The scope of the data to be covered in the pilot project, and supporting rationale for pilot design and scope
- The reporting template to be used
- The approach to PEP reporting obligations for the pilot
- A list of the extractive companies that would be subject to disclosing their beneficial owners under the pilot

6. Following approval of the Beneficial Ownership Pilot Project design by the MSG, the consultant should;

- Gather the data according to the agreed scope
- Summarize the data and present it in a comprehensible format for the MSG
- Coordinate with the MEITI Independent Administrator to integrate the BO data into the 2nd/3rd MEITI report.
- Complete a report which explains obstacles encountered, lessons learned and recommendations on expanding the pilot to meet the EITI BO Requirements, including any changes to the MEITI BO Workplan.

7. Support the on-going implementation of the Beneficial Ownership Work Plan including;

- Mentoring of BO Task Force and staff to take over full implementation of the workplan, and advising the MSG on the status of Work Plan implementation
- Production of a completion report, which covers progress on MEITI BO Implementation and further recommendations on meeting the EITI Standard by 2020.
4. Deliverables

The assignment is expected to commence in November 2017, culminating in the finalization of the roadmap 11 months later. The proposed schedule is set out below:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Date</th>
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<tbody>
<tr>
<td>Signing of contract (Tranche payment: 10% of contract amount)</td>
<td>10th November 2017</td>
</tr>
<tr>
<td>Draft BO Work Plan and Budget submitted for MSG Approval <em>(including proposed Institutional and Implementation Arrangements, Communications and Capacity Development Plans)</em> (Tranche payment: 15%)</td>
<td>Six weeks after contract signing</td>
</tr>
<tr>
<td>BO Pilot Project Plan (including the proposed BO definition, scope, reporting template, and approach to PEP reporting obligations) submitted for MSG Approval (Tranche payment: 15%)</td>
<td>Six weeks after contract signing</td>
</tr>
<tr>
<td>BO Pilot Project Report (Tranche payment: 30%)</td>
<td>14 weeks after contract signing</td>
</tr>
<tr>
<td>Activities under the Work Plan completed According to Agreed Dates. Output: Updated Work Plan (Tranche payment: 15%)</td>
<td>11 months after contract signing</td>
</tr>
<tr>
<td>Execution of Capacity Building Plan and Handover of Implementation Responsibilities to Domestic Stakeholders Output: Completion Report, including all training material (Tranche payment: 15%)</td>
<td>11 months after contract signing</td>
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5. Consultant requirements

The Consultant team must include:

- **Legal expertise (appr. 50 days):** Minimum 10 years’ experience in corporate and/or investment law, business administration, or commercial/financial operations for oil, gas or mining companies, or similar fields, preferably in Myanmar or SE Asia.

- **Sector expertise (appr. 25 days):** Knowledge of the oil, gas and mining sectors or other natural resources sectors, preferably in Myanmar or the SE Asian region.

- **Capacity Building expertise (appr. 25 days):** Proven experience of pilot project implementation and transfer of knowledge.

- A track record in similar work. Prior international or local experience implementing EITI is preferred, but not required.
- 100 anticipated staff days between November 2017 and October 2018.
- Consultant team members will be required to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided.

6. Administrative arrangements

The Beneficial Ownership Consultant will report to the National Coordination Secretariat, Program Manager, the Beneficial Ownership Taskforce (once established), and the MEITI MSG.

7. Reference materials

Relevant reference documents are available from https://eiti.org/beneficial-ownership.