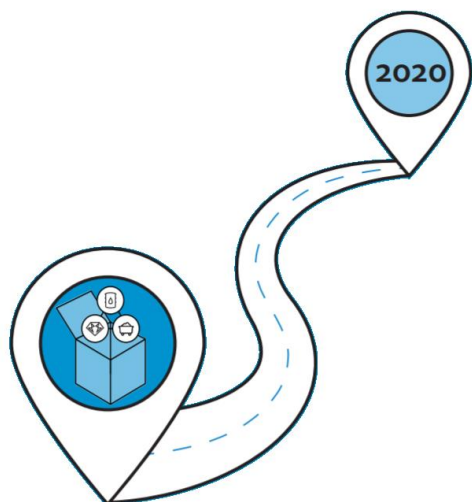


BENEFICIAL OWNERSHIP IN ASIA



The Extractive Industries Transparency Initiative (EITI) requires its 52 implementing countries to disclose beneficial ownership information by 1 January 2020. Since the requirement was agreed by the EITI Board in 2016, several governments have introduced reforms. There have been varying degrees of progress given the different political contexts, government systems and levels of capacity. However, considerable progress has been made in developing legal frameworks, increasing awareness among stakeholders, building capacity and developing systems to make beneficial ownership information publicly accessible.

To meet the 2020 deadline, EITI implementing countries were required to develop roadmaps that outline their plans and timetable for institutionalising policies to advance beneficial ownership transparency. This brief describes the progress of EITI countries in Asia in implementing these reforms.

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Armenia

- **Reforms:** In October 2018, the Government of Armenia approved a package of draft laws that define the process of disclosing the beneficial owners of mining companies. The draft law is currently pending the parliament's approval. Armenia EITI is planning to work on the bylaws once the package is approved and is considering several capacity building events in 2019. The government also committed to disclose beneficial owners of all companies in its OGP National Action Plan.
- **Good practice and opportunities:** The government plans to start the implementation of its OGP commitment by piloting beneficial ownership disclosure of extractive companies. The EITI will be used as a platform for data collection and disclosure. The Ministry of Justice will work closely with Armenia EITI on regulation and implementation to consider robust assurance and verification procedures, and will engage with the Anti-Corruption Council to verify beneficial ownership declarations related to politically exposed persons (PEPs). Asset declarations for PEPs are disclosed and publicly accessible.
- **Challenges:** Implementation of reforms in accordance with the beneficial ownership roadmap was postponed and could encounter further delays. It may also be challenging for the government to provide adequate company guidance on reporting before 2020.
- **Support needs:** Technical assistance on data standards and assurance and verification procedures is needed.

Indonesia

- **Reforms:** In 2018, the Government of Indonesia issued Presidential Decree No 13 requiring business entities, foundations, cooperatives and other entities to disclose their beneficial owners to the Ministry of Law. This decree is complemented by issuances from the Ministry of Energy and Mineral Resources requiring extractive companies to report their beneficial owners to the Ministry before applying for any type of permit. Beneficial ownership disclosure is also part of the 2018 National Strategy to Prevent Corruption.
- **Good practice and opportunities:** Beneficial ownership reform is high in the government agenda and there is strong inter-ministry cooperation to advance this reform. Each ministry is responsible for outreach activities to increase awareness on beneficial ownership requirements. The EITI, under the Coordinating Ministry of Economic Affairs, leads outreach activities with extractive companies and has piloted data collection for the 2018 EITI Report. To implement the Presidential Decree, the Ministry of Law and Human Rights revised their Legal Entity Administration System to include beneficial ownership information. Ministerial decrees are being drafted to institutionalise these changes.
- **Challenges:** Comprehensiveness of beneficial ownership data could prove challenging considering the scope of the requirement which includes all companies in Indonesia. There is still an ongoing discussion on whether beneficial ownership information will be publicly accessible.
- **Support needs:** Technical support is needed to develop data verification mechanisms and ensure proper identification of politically exposed persons.

Kazakhstan

- **Reforms:** The Government of Kazakhstan is implementing the new Code on Subsoil and Subsoil Use that was adopted in December 2017. According to the regulation, oil and gas companies should have reported their beneficial owners by 25 January 2019, and mining companies will have to do so by 1 April 2019. The Ministry of Industry and Infrastructure Development intends to build its beneficial ownership register in 2020 as part of a digital data bank.
- **Good practice and opportunities:** Beneficial ownership disclosure is part of the licensing process and informs the government's decision to allocate exploration and extraction rights to companies. The adopted definition includes foreign governments as beneficial owners. In such instances, state-owned enterprises should disclose which government entity they are accountable to. The disclosure of beneficial owners is already in effect, and data is collected through the EITI reporting portal (EGSU).
- **Challenges:** While the government collects granular beneficial ownership data, there will be limitations to public access to all information. Intergovernmental collaboration on beneficial ownership information could be improved to support the development of a robust verification system.
- **Support needs:** Capacity building activities with companies are needed to provide guidance on reporting.

Kyrgyz Republic

- **Reforms:** In May 2018, the Parliament of the Kyrgyz Republic adopted the Subsoil Law that introduced a definition of beneficial ownership, requires public access to information and imposes sanctions for non-reporting. The definition includes foreign governments as beneficial owners of companies. In August 2018, the government signed an MoU with OpenOwnership to build a publicly accessible register aligned with the global beneficial ownership open data standard. The government is developing the beneficial ownership bylaws, in accordance with recommendations from the EITI and OpenOwnership. The State Committee on Industry, Energy and Subsoil Use is considering to reform the existing license register to include beneficial ownership information.
- **Good practice and opportunities:** OpenOwnership supports the government's efforts in collecting and publishing high quality, publicly accessible beneficial ownership data for applicants and holders of oil, gas and mining licenses. The resulting data will be automatically available on the OpenOwnership Register (www.register.openownership.org) linking to other beneficial ownership data from around the world. The government exempted publicly-listed companies from reporting. Companies are obliged to disclose politically exposed persons.
- **Challenges:** The government could benefit from further support to undertake verification procedures. Discussions on attestation procedures have been challenging and will require further political support. Extractive companies have expressed concerns towards beneficial ownership disclosure, regarding it as extra burden and an obstacle for future investment.
- **Support needs:** Financial support for stakeholder consultations and technical assistance on data assurance and verification procedures are needed.

Mongolia

- **Reforms:** Beneficial ownership reporting is high on the government agenda, but further work is needed to ensure public disclosure. The 2018 Budget Law includes a requirement on beneficial ownership disclosure for all mining license-holders, however the beneficial ownership provision remains ambiguous and does not enable public access. The government has yet to develop a robust, legally enforced system for beneficial ownership disclosure. In the short term, the government will leverage EITI reporting to collect beneficial ownership data.
- **Good practice and opportunities:** The country has been disclosing beneficial ownership information through EITI Reports for five years. In 2018, Mongolia EITI conducted numerous capacity building and consultation activities directed at civil society, companies and relevant government entities. The 2018 EITI Report includes references to politically exposed persons.
- **Challenges:** Coordination between various government entities could be improved to avoid delays on implementing beneficial ownership reforms and combine efforts to meet the 2020 deadline.
- **Support needs:** Technical assistance is needed to develop the legal framework for beneficial ownership reforms and for the collection and dissemination of quality beneficial ownership data.

Myanmar

- **Reforms:** In 2018, a Beneficial Ownership Task Force was created to ensure high-level political engagement. While current legislation does not yet address beneficial ownership disclosure, the Directorate for Investment and Company Administration (DICA) plans to upgrade its systems to incorporate beneficial ownership information in its database. A Presidential Decree is being drafted by the Beneficial Ownership Task Force which will require disclosures by extractive companies by October 2019, with detailed requirements for disclosures of politically exposed persons.
- **Good practice and opportunities:** Myanmar EITI has conducted awareness-raising activities with government, companies and civil society. The EITI Multi-Stakeholder Group (MSG) is adopting a phased approach to implement reforms with concrete short and long-term plans on data collection, first through EITI Reports and eventually through systematic disclosures by DICA. Details on beneficial owners have been disclosed through a pilot report published in 2018.
- **Challenges:** There are challenges in securing support from some companies due to the perception that disclosing beneficial information might pose threats against their security.
- **Support needs:** Technical support is needed to upgrade DICA's company register, both to include beneficial ownership information and to ensure that sufficient data verification procedures are adopted. Technical assistance should be provided in developing the legal framework for beneficial ownership reforms and for capacity building.

Papua New Guinea

- **Reforms:** There are ongoing discussions within the Investment Promotion Authority (IPA), the company regulator, to incorporate beneficial ownership disclosures in their systems.

- **Good practice and opportunities:** PNG EITI is conducting stakeholder consultations in subnational units to increase awareness on the importance of beneficial ownership reforms. Joint collaboration with relevant agencies such as Bank of PNG and Office of the State Solicitor is being explored by PNG EITI.
- **Challenges:** There are anticipated resource and capacity constraints in maintaining beneficial ownership registers and collecting data from multi-layered companies. Increased political commitment is needed to drive legislative and policy reforms on beneficial ownership.
- **Support needs:** Technical assistance is needed to develop the legal framework for beneficial ownership reforms and for capacity building. Financial support is needed for awareness-raising activities.

Philippines

- **Reforms:** In 2018, the Securities and Exchange Commission (SEC) signed Memorandum Circular (MC) No. 17, series of 2018 requiring all domestic corporations, including extractive companies, to disclose their beneficial owners through their annual filing of General Information Sheets (GIS) with the SEC. The Department of Finance included beneficial ownership in its commitment under the Philippine Open Government Partnership (OGP) National Action Plan 2017-2019. To ensure long-term sustainability of beneficial ownership disclosure in the extractives, civil society championed the filing of Senate Bill No. 1883, otherwise known as the “Open Extractives Data Act”. The proposed legislative reform requires a publicly available register of beneficial owners.
- **Good practice and opportunities:** Philippine EITI has been conducting stakeholder consultations for every step of their beneficial ownership reform process, from agreeing on the granularity of data that should be disclosed, to adopting an electronic declaration form to mainstream beneficial ownership disclosures. The 2018 EITI Report includes beneficial ownership disclosures. To incentivise companies to publish their beneficial owners, beneficial ownership disclosure has been included in the criteria for the annual PH-EITI Transparency Awards. The MSG will relaunch the PH-EITI Contracts Portal to include beneficial ownership information and rebrand it as Contracts and Ownership Registry in the Extractives (CORE). Philippine EITI plans to pursue an automatic exchange of information with the SEC through a memorandum of agreement. The Philippines has identified champions in the legislature, resulting in the filing of a Senate Resolution to conduct an inquiry on the beneficial owners of extractive companies. This inquiry will investigate compliance with foreign equity restrictions under the Philippine Constitution.
- **Challenges:** Considering the broad scope of companies covered and the lack of a publicly-available, centralised register of beneficial owners in the country, comprehensive disclosure of beneficial ownership information could be challenging in the short term.
- **Support needs:** Given the scale of beneficial ownership disclosure, further support for an extensive outreach is needed.

Tajikistan

- **Reforms:** The draft Law on Subsoil and Subsoil Use that included mandatory EITI reporting and beneficial ownership transparency has been under review by the government for over two years.

Recent amendments to a law on state registration of legal entities and natural persons (January 2019) introduced a requirement to disclose beneficial ownership information when registering for business activities in Tajikistan. However, this information is not publicly accessible. The MSG is currently exploring opportunities to embed beneficial ownership provisions in other relevant laws, such as the Anti-Money Laundering Law.

- **Good practice and opportunities:** While the country piloted beneficial ownership disclosure in 2015, few companies reported. Existing systems for company registration could be potential platforms for beneficial ownership disclosures.
- **Challenges:** The lack of legislation and clear policies on beneficial ownership transparency have hampered progress on beneficial ownership reforms.
- **Support needs:** There is a need for high-level communication on the benefits of implementing beneficial ownership transparency. There is also a need for assistance on work related to developing recommendations and drafting of the legal amendments and bylaws. Further work on the required granularity of disclosures and developing regulations is required.

Timor-Leste

- **Reforms:** The EITI in Timor-Leste recognises the need to align beneficial ownership efforts with ongoing reforms in mining and tax legislations and in the development of Production Sharing Contracts. There are clear opportunities to leverage existing systems on company reporting.
- **Challenges:** The wider political situation has affected the progress on beneficial ownership discussions and EITI implementation in general. The lack of legislation and clear policies on beneficial ownership poses challenges in collecting beneficial ownership data.
- **Support needs:** Timor-Leste has commissioned a study to guide their work on beneficial ownership. Technical assistance is needed to build capacity and provide support in developing a legal framework and agreeing on the granularity and scope of beneficial ownership disclosures.