



**PILOT ASSESSMENT OF BENEFICIAL  
OWNERSHIP (BO) DISCLOSURE:  
NIGERIA'S EXPERIENCE.**

NEITI 2015.

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## ACCRONYMS

SN		
1	<b>BO</b>	Beneficial ownership
2	<b>CAC</b>	Corporate Affairs Commission
3	<b>DPR</b>	Department of petroleum Resources
4	<b>EITI</b>	Extractive Industries Transparency Initiative
5	<b>MCO</b>	Mining Cadastral office
6	<b>NEITI</b>	Nigeria Extractive Industries Transparency Initiative
7	<b>NSWG</b>	National Stakeholders Working Group
8	<b>O&amp;G</b>	Oil & Gas
9	<b>PEP</b>	Politically Exposed Persons
10	<b>SLFA</b>	Simple Log Frame Analysis
11	<b>SM</b>	Solid Minerals

# **PILOT ASSESSMENT OF BENEFICIAL OWNERSHIP (BO) DISCLOSURE NIGERIA EXPERIENCE.**

## **INTRODUCTION**

Following the decision of the EITI International Board to implement the Beneficial Ownership (BO) scheme in 2013, Nigeria voluntarily resolved to take part in the pilot scheme with 11 other EITI implementing countries, to assess the practicability of the BO in identifying corruption risk through the disclosure of the names of beneficial owners in companies operating in the extractive industry.

This is Nigeria's evaluation and assessment report in line with the Pilot Disclosure Assessment Terms of Reference provided by the EITI Secretariat. The Terms of Reference are:

1. Assessment of the exhaustiveness and quality of the BO information disclosed
2. The appropriateness of the agreed BO definition and related information on company ownership
3. The Methodology of data collection
4. Any obstacles encountered during the pilot implementation.

## **OVERVIEW OF BO DISCLOSURE IN NIGERIA**

Since the commencement of the pilot scheme in 2013, Nigeria has conducted 2 EITI reports that took into consideration, the requirements of BO disclosure as stated in the EITI Standards. The two reports are:

- i. 2012 Oil and Gas and the
- ii. 2012 Solid Minerals.

Prior to the BO requirement there was no strict necessity either by statute or practice for BO disclosure by companies operating in the extractive industry in Nigeria.

Nigerian laws do not require companies to disclose BO information. However the Nigeria Code of Conduct and Tribunal Act 1990 operate what may be regarded as a complementary requirement, the need for senior government officials including Political Exposed Persons (PEP) involved mainly in the three

arms of government (executive, legislative and judiciary) to disclose their assets and interests in companies. Sanctions are prescribed for failure to provide the necessary information required by the Code of Conduct Bureau.

Also by virtue of the lifting of the veil of incorporation under common corporate law, a company may be asked by a court of law to identify the control or ownership of the shares in a company. This would need a suit to be filed in court and such suits tend to identify the ownership when fraud is alleged in the conduct of the management of the company. This however is only available to an aggrieved party and it is not readily available to the public.

Consequently Nigerian law is devoid of the need to disclose BO to the public

## **DEFINITION OF BO**

Requirement 3.11 d (i-v) of the EITI Standard defines BO as “a beneficial owner in respect of a company means natural persons who directly or indirectly ultimately owns or control a corporate entity”.

The National Stakeholders Working Group (NSWG) of NEITI at its meeting of 15<sup>th</sup> December 2013 concurred with the definition of BO in the EITI Standard as the basis for the pilot scheme. In an extensive discussion, the consensus of the NSWG was that since BO disclosure is a novelty, the expressed definition in the EITI Standard was best suited for present purposes so as to give its implementation global outlook that would be acceptable to Nigerians. However the NSWG also agreed that it would visit the definition as the implementation of the BO progresses, if need be.

It was also agreed by the NSWG that the definition should be of a general application in the extractive industry i.e. for both Oil & Gas and Solid Minerals BO disclosure in Nigeria.

## **STAKEHOLDERS CONSULTATION**

Nigeria as a pilot country in the implementation of the BO disclosure made significant efforts in stakeholders' consultation and advocacy. These were done

to create the required awareness for BO disclosure. This awareness drive was conducted through the following means

- i. In November 2013, NSWG organized a Gap Analysis workshop to identify the gaps between the requirements of the new EITI Standard and the 2011 Oil & Gas NEITI (EITI report). The aim was to ascertain areas where the EITI Standard would be incorporated in subsequent EITI reports. The BO disclosure was identified as one area and was subsequently included in the Terms of Reference for the 2012 Oil & Gas exercise.
- ii. Templates workshops were organised for companies in both the Oil & Gas sector and Solid minerals sectors respectively to intimate the companies of the new requirements. Comments were made by the companies in the design of a template for the BO data.
- iii. A capacity building program for civil society organisations and the media on EITI standards was held in May 2014. A lot of emphasis was given to the BO disclosure requirement.
- iv. A training programme was held for the benefit of the NSWG and some stakeholders by Open Oil on BO disclosure in May 2014. The training further enlightened participants on the requirement and rudiments of BO disclosure

The general consensus from the awareness drive was encouraging. The need for BO disclosure was highly appreciated in the pursuit for transparency and accountability in the extractive industry. However, certain concerns were raised about the sensitivity of using BO disclosure in witching hunting political foes.

## **METHODOLOGY OF DATA COLLECTION**

The methodology adopted in the BO disclosure was a Simple Log Frame Analysis. (SLFA) Templates were issued to the companies to be completed with the relevant information in accordance with the terms of reference containing the BO disclosure requirement. (See format below.)

Full legal Name of coy	RC No	Contact Address	Beneficial owner(s)		Quoted	Declarant	Name of agreement, (JV, PSC, SR/MF)
			Govt/Private	% interest holding			

## (Oil & Gas)

Companies	N°	Name/Entity	Level of ownership	Nationality of the owner	Stock exchange quotations (yes/no)	Stock exchange	Owner (if the company's shares are not quoted)
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## (Solid Minerals)

The same methodology was used for both Oil & Gas and Solid Minerals reports. However, the design of the above templates was different in order to take into consideration the difference in operational arrangements between the two different sectors of the extractive industry in Nigeria.

The designs of the templates were in alignment with the findings of the templates workshop held with the companies and in collaboration with other various stakeholders in both sectors respectively.

The NSWG approved these templates for the collection of BO data. The design of the first template called “Company Identification” included disclosure of the following:

- i. Full name of the company
- ii. Registration number
- iii. Whether publicly listed or not
- iv. Address of the company
- v. Shareholders (names and addresses)
- vi. Percentage of shareholding by shareholders
- vii. Declaration to be done (preferably by the Company Secretary or General (Legal) counsel of the company).

The second template called “Beneficial Ownership Definition” included:

- i. Identity of the shareholder
- ii. Structure of the owners
  - a. Number of shares held

- b. Structure of the ownership: types of shares, voting rights
- iii. Date when shares were acquired
- iv. Is the shareholder a PEP? If yes,
  - a. Public office position and role
  - b. Date when office was assumed
  - c. Date when office was vacated
- v. Attestation as in declaration above

However, collection of BO data would not achieve much without verification of the data in line with EITI requirements. At the verification/validation stage of the audit process, all information provided in the templates is checked against the data in the custody of the relevant regulatory agencies authorized to deal with such activities contained in the completed templates for reliability and accuracy.

Verification gives credibility to the data collected.

The verification of the BO by the independent auditor was done through the following institutions:

**Corporate Affairs Commission (CAC)**

The CAC in Nigeria is responsible for maintaining the corporate register of all companies. The register contains the names of shareholders (shareholding structure) of all companies in Nigeria.

Both the data collected on BO in the 2012 Oil & Gas and 2012 Solid Minerals reports respectively were verified against the data at the CAC.

**Department of Petroleum Resources (DPR) – Oil & Gas only**

DPR has the statutory responsibility of ensuring compliance with petroleum laws, regulations and guidelines in the Oil & Gas Industry. Amongst its functions is the processing of industry application for leases, licenses and permits. Whilst DPR is not a depository or an agency that deals with of BO disclosure, nonetheless efforts were made to check for BO at the stage the application for a lease,

licence or permit was made. This does not necessarily show BO but can be regarded as a stepping stone to ascertaining BO

#### **Nigerian Mining Cadastre Office – Solid Minerals only**

This Office is responsible for issuing and maintenance of licenses in the Solid Minerals Industry. Checks were made at the Office but given the extent that the Nigerian solid minerals sector is replete with artisanal mining and illegal mining, this exercise was not very successful.

### **ASSESSMENT OF THE EXHAUSTIVENESS AND QUALITY OF THE BO INFORMATION DISCLOSED**

At this novel or pioneer stage of the BO pilot scheme in Nigeria, the exhaustiveness and the quality of the BO disclosed cannot be deemed absolute or complete. Like anything new, it needs to be properly evaluated and assessed to ensure a better implementation in the future. Nonetheless, the NSWG tried to ensure that the data was exhaustive enough by agreeing:

- i.** Threshold of BO: given the EITI definition adopted for BO, somebody must “ultimately own or control” the corporate entity to become a beneficial owner. The NSWG had decided that this would rather be too restrictive in the reporting of BO, if reliance was placed solely on “ultimately own or control”. Initially, the NSWG set a threshold of 5% of ownership of the entity as the minimum, but after careful consideration, the NSWG decided to do away with this threshold especially in Oil & Gas Sector to ensure more expansive reporting as a 1% BO in some Oil & Gas companies would be substantive enough for recognition in the BO scheme. The threshold was therefore removed so that all BO are reported for extractive industry companies.
- ii.** Extent of Reporting: the NSWG decided to report BO for only (all) in-country (local) companies in the extractive industry.

- iii. In the 2012 Oil & Gas report 42 out of the 44 companies completed and returned the BO templates. This was regarded as a fair return on a fresh requirement
- iv. On the other hand, the 2012 Solid Minerals report was not as exhaustive as the 2012 Oil & Gas report although some BO was duly reported by some companies covered by the audit. Out of the 65 (sixty five) companies that were covered 3 (three) are publicly listed companies, 29 made full disclosure and 22 (twenty two) did not report at all or made very scanty disclosure.

Furthermore, to ensure that the quality of the BO was reasonable at this pilot stage, the following were done

- i. The templates that were distributed to the companies had a column for a declaration to be made by a senior officer of the companies (preferably by the Company Secretary or General Counsel of the company) stating the facts disclosed were to his/her best knowledge true. This was to ensure that the quality of the BO data was authenticated by the relevant officer in the company
- ii. Verification of the disclosed data was conducted principally at the CAC. All the companies covered by the BO in the NEITI reports are companies registered under the Corporate and Allied Matter Act (CAMA) 1990. The Register contains names of companies, identification numbers, contact addresses, names of shareholders and percentage shareholding. NEITI was very mindful of the fact that the data obtained from the CAC tended to show corporate ownership more than BO. Nonetheless there were instances where verification at the CAC aligned with the BO disclosed by the companies.

## **CHALLENGES**

1. Delay and non-completion of BO templates by some companies.
2. Outright refusal to fill templates by some companies.
3. Companies owned by other corporate entities and failure to produce further information on those companies.
4. Violation of the confidential agreements with companies in publishing names of BO.
5. The Solid Minerals is mostly dominated by artisanal and illegal miners and it was very difficult to capture relevant data.
6. Discrepancies between information disclosed in BO and information in CAC.
7. Perception of the BO: seen by some as witch hunting of political opponents.
8. Lack of political will to ensure that BO disclosure is included in the economic agenda of the nation and the drive to ensure its implementation.
9. PEP and senior government officials using surrogates to front for them.
10. Difficulties of reaching focal points of the companies because of lack of updated contact details.
11. No statutory obligation to disclose BO.
12. Failure to pass new statutory laws on the extractive industry: the present laws are very archaic and obsolete in light of the demands of global best practices

## **RECOMMENDATIONS**

1. Capacity building: include the BO in training workshop to stakeholders: stressing the importance of the disclosure of this information.
2. Better automation of data/ records.

3. Engagement of the National House of Assembly and the Civil Society to exert pressure on BO disclosure
4. Improvement on the BO template to cover production agreement/relationship (e.g. joint venture, production sharing contract, sole risk or service contract with government and also the relationship between individual companies involved in the production agreement
5. In bidding for extractive industries licenses and contracts bidders should be required to declare the BO of the shares in the bidding companies
6. Working with regulators to create a web portal that has the full text of:
  - a. All contracts, concessions, production arrangements and other agreements (and their addendum) granted by, or entered into by the Government which provide the terms attached to the exploitation of extractive resources.
  - b. All licenses, leases, titles or permits (and their addendum) by which the Government confers on a company (ies) or individual(s) right to exploit extractive resources.
7. Enactment of new laws to cover for the dynamics of the extractive industry.

**PLEASE REFER TO:**

- See Appendix 3.9 and S. 1.8 page 46 (2012 NEITI Oil & Gas Report)
- See Annex 4 and S. 3.3 (2012 NEITI Solid Mineral Report).