

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.

Guidance note on MSG oversight of beneficial ownership disclosures

Guidance note 28 – Requirement 2.5

1. Introduction

The EITI Standard requires that the beneficial owners of extractive companies are disclosed.¹ Multi-stakeholder groups (MSGs) have an important role in ensuring that these disclosures are comprehensive and effective. Whether beneficial ownership data is collected and disclosed by a government agency or through the EITI process, the MSG should ensure that disclosures are in line with the EITI Standard, assess gaps and weaknesses and find ways to strengthen disclosures.

This guidance note lays out a step-by-step approach that supports MSGs in finding the most suitable solutions for effective beneficial ownership disclosures in their context. The note also provides links to further guidance on implementation of beneficial ownership disclosures including legal approaches, data collection, verification and publication.

2. MSG oversight of beneficial ownership reporting

Step 1 – Reviewing the current policies and practices

The first step is to review existing policies and practices related to beneficial ownership disclosure, as well as any reforms planned or underway. These policies and practices may be specific to the extractive sector or apply to all corporate entities.² Reviewing relevant legal provisions and actual data collection and disclosure practices will allow the MSG to consider how to complement existing reporting systems and what further measures are required to ensure comprehensive and accurate disclosures in the extractive sector.³ The MSG may need to consult and engage with government agencies that are typically not engaged in the EITI process (for instance the company register, investment commission, financial intelligence unit, etc.)

¹ EITI Requirement 2.5: <https://eiti.org/document/eiti-standard-2019#r2-5>

² For instance, company filing requirements upon company registration or filing requirements related to beneficial ownership disclosure in bidding processes and license registries for extractive projects.

³ See some recommendations in the EITI paper on *Legal approaches to beneficial ownership transparency in EITI countries*, <https://eiti.org/document/legal-approaches-to-beneficial-ownership-transparency-in-eiti-countries>

It is worth noting that information about the *legal* owners and share of ownership of extractive companies should also be publicly available. A legal owner is the direct shareholder of the company and can be, for example, another corporate entity. A beneficial owner is always a natural person.

The MSG should document its discussions and decisions. The government's policy should also be documented, for example in the EITI Report, unless it is already publicly available elsewhere.

Some questions the MSG may wish to consider as a first step are:

- Which government agencies are collecting and maintaining (or have the capacity to collect and maintain) information on legal and beneficial ownership of companies including those operating in the oil, gas and mining industry?
- What information are companies currently required to report to the government on their legal and beneficial owners when registering in the country?
- What information are companies currently required to report to the government on their legal and beneficial owners when applying for a license?
- How much information on legal and beneficial owners of extractive companies is already publicly accessible through government and company reporting ?
- Are there relevant legal and regulatory reforms planned or underway that may provide opportunities for embedding requirements for beneficial ownership disclosure in national legal instruments?

Step 2 – Agreeing a definition of “beneficial owner”

The MSG should agree how to define “beneficial owners”. Requirement 2.5 specifies that a beneficial owner is the “natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”. However, definitions of control and related thresholds vary from country to country.

If relevant laws already include a definition of beneficial owner, the MSG may wish to consider adopting this definition, taking it as a starting point or agreeing whether pre-existing definitions might be inadequate for the purpose of collecting and disclosing beneficial ownership data. International norms, such as those established by the Financial Action Task Force, should also be taken into account when agreeing the definition. The definition should include ownership thresholds, i.e. clearly define what level of ownership or control constitutes a reporting obligation and which indicators are used to identify this.

The MSG should also define who is considered a politically exposed person (PEP) and specify reporting obligations for them. The MSG should review whether national anti-money laundering legislation already includes a definition of PEPs.⁴ These discussions and the MSG's decisions should be clearly documented, for example, in MSG meeting minutes or the EITI Report.

⁴ For further guidance on PEPs, see https://eiti.org/sites/default/files/documents/beneficial_ownership_and_politically_exposed_persons.pptx

The MSG may wish to consult further guidance on agreeing appropriate definitions on beneficial ownership.⁵

Step 3 – Designing disclosures and collecting data

3.1 Scoping companies

Once the MSG has a good understanding of the current situation and upcoming reforms and has agreed on a definition of beneficial owner, it is well positioned to address disclosures.

Before deciding how to collect beneficial ownership information, the MSG should gain an understanding of which companies the requirement applies to. This information can usually be attained from the license register and corporate register. The license register should include all license holders, while the corporate register may include information on whether these are private or publicly listed companies.

The corporate entities that should provide beneficial ownership information are those that apply for or hold a participating interest in an oil, gas or mining exploration or production license or contract. All entities participating in a joint venture are required to disclose their beneficial owners. In essence, the requirement covers all existing and potential license holders. However, publicly listed companies, including their wholly-owned subsidiaries, are only required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

3.2 Designing disclosures

The MSG should start by consulting relevant government agencies to find out what kind of data they already collect, to build on existing disclosure systems. The corporate register may already include beneficial ownership information. If the government already collects data about the beneficial owners of extractive companies, the best way forward may be to seek companies' approval for the publication of this data. It is important to ensure that the data truly covers beneficial owners and not only shareholders.

If the data is currently not collected, the MSG may agree that a government agency will request it from companies or task the Independent Administrator to do so. The MSG, together with the national secretariat, could also collect the data itself or seek further information to complement existing disclosures that fall short from the provisions of Requirement 2.5. In agreeing an approach to data collection, the MSG and the responsible government agency should take into consideration the number of companies the requirement applies to. In some countries the requirement only applies to a few companies, while others have thousands of license holders.

Beneficial ownership information could be published, for example, in a corporate register, a license register or a specific beneficial ownership register. The default expectation is for implementing countries to make beneficial ownership data available through routine company

⁵ For further guidance on definitions and thresholds, see https://eiti.org/sites/default/files/documents/beneficial_ownership_definitions.pptx

and government reporting, while EITI Reports should be used to provide additional context and address any gaps and concerns about data quality. The MSG should collaborate closely with relevant government agencies when designing disclosures to ensure that EITI disclosures complement and encourage the routine collection and disclosure of beneficial ownership information. Information should be published in a format that is accessible, ideally as machine-readable open data.⁶ Where there is limited publically accessible information on beneficial ownership or systems are being set up to facilitate disclosures in the future, information could also be published on the local EITI website or an EITI Report.

Regardless of who collects the information and how it is disclosed, it is important that the MSG ensures that companies are requested to provide all the data points listed in Requirement 2.5. These include the name of the beneficial owner, the nationality, the country of residence, identifying any politically exposed persons, the level of ownership and details about how ownership or control is exerted. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

3.3 Ensuring data reliability and comprehensiveness

The MSG should agree assurances that help ensure the reliability of beneficial ownership data, including the entity responsible for reviewing data submitted by companies. 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. If beneficial ownership data is already being collected by the government, the MSG should review existing assurance mechanisms and consider whether it deems them adequate.⁷ This discussion and the MSG's decision should be documented.

If the MSG administers the collection of beneficial ownership data, it should agree on the template for data collection. A model template is available from the EITI website.⁸ If the information is collected by a government agency, the MSG may wish to support the agency by, for example, reviewing data collection procedures, sharing the template for data collection and reaching out to companies.

Further guidance on data collection and a standard suggestion for text on beneficial ownership in the Independent Administrator ToR are available from the EITI website.⁹ OpenOwnership has developed a Beneficial Ownership Data Standard that some EITI countries have opted to use for their disclosures.¹⁰

3.4 Reaching out to companies

⁶ See EITI's Open Data Policy: <https://eiti.org/document/eiti-open-data-policy>.

⁷ For further guidance on data verification, see https://eiti.org/sites/default/files/documents/beneficial_ownership_data_verification.pptx.

⁸ Model beneficial ownership declaration form: <https://eiti.org/files/documents/draft-model-beneficial-ownership-declaration-form.xlsx>.

⁹ https://eiti.org/sites/default/files/documents/2016_standard_terms_of_reference_for_independent_administrators_with_bo.docx

¹⁰ OpenOwnership Beneficial Ownership Data Standard: <https://standard.openownership.org/en/v0-2-0/>.

The requirement on beneficial ownership disclosures applies to companies that may not be familiar with EITI reporting. The MSG should ensure that extractive companies are informed about the purpose of beneficial ownership transparency and the disclosure requirements that apply to them. Industry associations can play an important role in this. The MSG may wish to develop instructions for companies on beneficial ownership reporting or support the responsible government agency in this work. To ensure comprehensive disclosures, it is important to agree a mechanism for providing support to companies that face difficulties in reporting the data. Especially in cases where the legal framework does not require beneficial ownership disclosures, the request for information could be accompanied with a letter from a senior government official explaining why this information is being requested from companies and explain the value of disclosing this information.

In countries where Requirement 2.5 is applicable to hundreds or even thousands of companies, the MSG is advised to prioritise its outreach efforts. The MSG could target, for example, companies that hold or apply for licenses for high-value or corruption-prone commodities. Implementing countries are required to request beneficial ownership data from all extractive companies holding or applying for licenses. If contacting each company is not feasible due to the large number of companies, the MSG or the responsible government agency could consider requesting disclosures through mass communication and contact a limited set of companies directly.

Step 5 – Reviewing the disclosures

Implementing countries are required to disclose any significant gaps or weaknesses in reporting on beneficial ownership information, including naming any entities that failed to submit all or parts of the beneficial ownership information. The MSG plays a key role in this.

The MSG should consider the following questions and document its discussion:

- Have all publicly listed companies, including wholly-owned subsidiaries, disclosed the name of the stock exchange and included a link to the stock exchange filings where they are listed? Do the disclosure requirements of these stock exchanges ensure the availability of beneficial ownership information?
- Have all corporate entities holding or applying for exploration and extraction licenses disclosed beneficial ownership information, including all partners in joint ventures? Has a list of non-reporting companies been disclosed?
- Are the reported beneficial owners natural, physical persons? Have the reporting companies disclosed all their beneficial owners?
- Have all data points agreed by the MSG been disclosed? Do these data points allow for the identification of beneficial owners?
- Are politically exposed persons clearly identified among beneficial owners?
- Is the level of ownership and how control is exercised disclosed? Do the agreed thresholds appear appropriate?
- Do gaps in beneficial ownership information materially affect the comprehensiveness and effectiveness of disclosures?
- Have companies adhered to the assurances agreed by the MSG or the responsible government agency? Do the assurances appear adequate for ensuring the accuracy of beneficial ownership information?

- Is the approach to updating beneficial ownership information adequate for ensuring the availability of accurate and timely information? Are changes in beneficial ownership clearly recorded?
- Is beneficial ownership information disclosed in an accessible and usable format? Are there barriers to accessing the data?
- Is comprehensive information about the legal owners and share of ownership of extractive companies publicly available?

The number of extractive companies that are not publicly listed varies hugely across EITI implementing countries. In countries where the number is high, the MSG may wish to consider a risk-based approach to reviewing beneficial ownership disclosures. This helps the MSG assess whether disclosures effectively capture the most relevant corporate entities and guides further efforts to address gaps.

The mapping could be based on, for example, the type of license, the year of award or transfer of the license, the legal owner, the commodity and/or the value of the asset. In some countries, corruption related to a certain commodity may be more common than for others. The process for awarding different types of licenses may vary, with some being awarded in a more transparent and competitive manner than others. If joint ventures are typical within a sector, the MSG may wish to prioritise the comprehensiveness of beneficial ownership disclosures of corporate entities operating in that sector. Companies that are owned by another company in an offshore jurisdiction and have not disclosed a beneficial owner may be of special interest to the MSG.

The MSG can also cross-check beneficial ownership information against other EITI disclosures. The MSG may wish to check, whether all companies that were awarded licenses or participated in a license transfer in the year under review disclosed beneficial ownership information. The same applies if the MSG identifies a company that contributed less than expected as payments to the government. In short, the basis for the risk-based assessment will vary from country to country, and the process will rely on MSG members' expertise in the sector. The MSG may also wish to draw from assessments by international organisations, such as the Financial Action Task Force and the OECD.

The MSG should agree a way forward to address the gaps and weaknesses identified. The MSG could, for example, contact companies to request for further information or assurances, alert the responsible government agencies about gaps and weaknesses and revisit the data collection procedure. It is important that the MSG documents its discussions about gaps and weaknesses, as well as the agreed actions and recommendations to address them.

3. Further guidance

The Secretariat has produced guidance covering many of the topics related to beneficial ownership reporting, including on:

- [Beneficial ownership: Definitions and thresholds](#)¹¹,
- [Beneficial ownership: Disclosing the identity of the beneficial owner](#) (Deciding on the data and level of detail to be disclosed)¹²
- [Beneficial ownership and Politically Exposed Persons \(PEPs\): Definitions and asset disclosure requirements](#) (How to address reporting of Politically Exposed Persons (PEPs) holding ownership in extractive assets)¹³
- [Beneficial ownership: Data verification](#) (How to ensure data reliability)¹⁴
- [Legal approaches to beneficial ownership transparency in EITI countries](#)¹⁵

An evaluation of the experience of beneficial ownership reporting during the EITI beneficial ownership pilot is also available: [EITI Beneficial Ownership Pilot Evaluation Report](#)¹⁶

EITI partner organisations including the has also issued guidance that might be helpful to MSGs. See for example:

- Natural Resource Governance Institute (NRGI): [Owning Up: Options for disclosing the identities of beneficial owners of extractive companies](#)¹⁷
- OpenOwnership: [Beneficial Ownership Data Standard \(v.0.2\)](#)¹⁸

¹¹ https://eiti.org/sites/default/files/documents/beneficial_ownership_definitions.pptx

¹² https://eiti.org/sites/default/files/documents/beneficial_ownership_identity_and_level_of_detail.pptx

¹³

https://eiti.org/sites/default/files/documents/beneficial_ownership_and_politically_exposed_persons.pptx

¹⁴ https://eiti.org/sites/default/files/documents/beneficial_ownership_data_verification.pptx

¹⁵ <https://eiti.org/document/legal-approaches-to-beneficial-ownership-transparency-in-eiti-countries>.

¹⁶ <https://eiti.org/document/beneficial-ownership-pilot-evaluation-report>

¹⁷ <https://resourcegovernance.org/analysis-tools/publications/owning-options-disclosing-identities-beneficial-owners-extractive>

¹⁸ <https://standard.openownership.org/en/v0-2-0/index.html>.