



REPUBLIC OF GHANA

GHANA EITI BENEFICIAL OWNERSHIP ROADMAP

OCTOBER 1, 2016

GHANA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE (GHEITI)

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Acronyms

BO	Beneficial Ownership
BOD	Beneficial Ownership Disclosure
BOI	Beneficial Ownership Information
CSO	Civil Society Organization
EITI	Extractive Industry Transparency Initiative
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
GHEITI	Ghana Extractive Industry Transparency Initiative
MSG	Multi-Stakeholder Group
NRGI	Natural Resource Governance Institute
OGP	Open Government Partnership
RGD	Registrar General's Department
RTI	Right to Information Bill

1.0 INTRODUCTION

The development of this Roadmap is in response to the requirements of the 2016 Extractive Industry Transparency Initiative Standard ([Standard 2.5](#)) which mandates all implementing countries to establish a public Beneficial Ownership (BO) disclosure regime by January 2020.

BO disclosure is recognised as one of the means of identifying the true owners who directly or indirectly ultimately owns or control a corporate entity. BO disclosure has in recent times gained considerable global attention. The revelations by the 2014 One Campaign Report – “*a trillion-dollar scandal*”, the Africa Progress Panel and the Panama papers revealed how resource-rich countries, particularly those of the developing world are losing billions of dollars from corruption, conflict of interests, and tax avoidance practices involving shady deals for natural resources through complex structures and secret company ownership. Maintaining a publicly accessible beneficial ownership register is vital to guard countries against these risks and to identify the faceless individuals who hide behind complex structures to enjoy benefits from resource extraction.

In Ghana concerns have been raised by citizens’ groups about their inability to access information on the beneficial owners of the companies that are granted mining leases and oil blocks in the country. The Ghana Extractives Industries Transparency Initiative (GHEITI), guided by the 2013 EITI Standard, attempted to collect information on the beneficial owners of natural resource contracts in the country, through its 2013 mining, oil and gas reports. However, the exercise was faced with difficulties since such information was not being collected by the relevant agencies. In particular, Ghana’s central companies’ register collected information on directors of registered companies or their legal owners, who are not necessarily the beneficial owners of the company.

It became clear that, it will take some policy, legislative and institutional reforms to establish a beneficial ownership database, and the decision as to make the data publicly accessible will certainly be a political one.

In addition to the EITI, other international obligations including the Open Governance Partnership (OGP) commitments and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) requirements commit Ghana to establishing a beneficial ownership regime.

2.0 CONSULTATIONS AND LEGISLATIVE PHASE OF GHANA'S BO ROAD MAP

2.1 Towards the Roadmap

As part of the road map for delivering on Ghana's commitment to establishing a Beneficial Ownership disclosure regime in Ghana, the GHEITI secretariat convened an MSG meeting to secure the group's buy-in into new EITI Standard requirement, and to consider the question as to whether to limit the disclosure to just extractive industry companies or to expand the scope to include all other companies in the light of the fact that Ghana had other international obligations to establish such regime. The discussions also focused on strategies for securing political commitment at the highest level of government as well as ensured other relevant stakeholders were well-informed about the process.

At the end of its deliberations the following, as contained in table 1 below, was agreed as the tentative road map for establishing a Beneficial Ownership disclosure regime in Ghana:

Table 1: Tentative Roadmap for Establishing a BO Regime

ACTIVITY	TIMELINES	RESPONSIBILITY
GHEITI's first attempt to report on BO in 2013 reconciliation report	December 2014	GHEITI
MSG sensitization on beneficial ownership disclosure concept	July 2015	GHEITI & NRG
Two stakeholder consultations for state and non-state actors	May 2016	GHEITI & OGP, NRG
Propose a draft amendment to the Company's Act	May	GHEITI & OGP, NRG
Establish Committee to harmonize conflicting legal issues	June	GHEITI & OGP
Sensitisation in Southern Zone	June	GHEITI & OGP
Sensitisation in Middle Zone	June	GHEITI & OGP
Sensitisation in Northern Zone	July	GHEITI & OGP
Establish GHEITI-CSOs Working Group on Beneficial Ownership	July	GHEITI & OGP
Engage with the media in generating public interest in the subject of Beneficial Ownership and its importance	July – September	GHEITI, OGP, CSOs Working Group

Organise lobby meetings with the Governance / Policy Team at the Presidency on proposed amendments to the Companies' Act	August	GHEITI, OGP, CSOs Working Group
Organise lobby meetings with Registrar General's Department, Attorney General, and Parliamentary Committee on Legal and Constitutional Affairs on the Companies' Act	September	GHEITI, OGP, CSOs Working Group
Companies' Act amended to provide for the establishment of a publicly accessible Beneficial Ownership Register in Ghana	September – October	

Subsequent events, building on the momentum of the two stakeholder consultations that GHEITI organised for state and non-state actors, however, altered this road map.

2.2 Stakeholder Consultations

Stakeholder consultation meetings between relevant ministries, departments and agencies were organised by GHEITI MSG with the aim to align various commitments made on BO under other international protocols, including OGP, and FATF commitments.

Specifically, GHEITI MSG undertook two major national consultations on the subject – one for state actors, and the other for non-state actors, involving in particular civil society organisations and individuals working on open governance, financial integrity, private sector accountability, and extractive sector issues.

The consultations sought to achieve the following objectives:

- Create a platform to discuss beneficial ownership concept and reporting including beneficial ownership definition, data collection, publication and utilization of beneficial ownership information in extractives; and
- To work on the policy, legal, regulatory and institutional processes required in developing a draft roadmap to inform further consultations on the establishment of a public beneficial ownership register in Ghana.

To secure political commitment at the highest level of government, a decision was taken by the MSG to involve the Office of the President in the planned consultations. Other state actors involved are: the Registrar General's Department; the Financial Intelligence Centre; Commission for Human Rights and Administrative Justice, Parliament, Economic and Organised Crime Office, Bank of Ghana, Securities and Exchange Commission, Ministry of Justice and Attorney General's Department, the Minerals commission, Petroleum commission, and the Public Sector Reform Secretariat.

The consultations with non-state actors on the other hand drew participation from company representatives; civil society organisations, including organised labour, gender-based groups, media, faith-based organisations; and consulting firms.

2.3 Outcome of the Consultations

The consultations achieved a consensus on the need to establish a Beneficial Ownership disclosure in Ghana. Both the state and non-state actors agreed that Beneficial Ownership disclosure should not be limited to extractive sector but expanded to include all other sectors.

One of the main arguments raised during the consultation had to do with the kind of information on beneficial owners that should be publicly accessible. Many argued on the potential security risks (identity theft, socio-cultural risks) associated publishing detailed information on beneficial owners. Participants reached a consensus on making some basic information available to the public while detailed information was only accessible by competent authorities.

2.4 Making further progress with the achieved consensus

Following the achieved consensus to expand the scope of BO disclosure to include all companies operating in Ghana, the Companies' Act of 1963 (Act 179) was identified as the most appropriate legal instrument to establish a beneficial ownership regime. Incidentally the law was under review and had only recently been laid before parliament, after nation-wide stakeholder consultations.

2.5 U.K. Anti-corruption Summit

The U.K. Anti-corruption summit provided the needed impetus for making progress on the achieved consensus on Beneficial Ownership. As part of Ghana's preparations towards the summit, the Natural Resource Governance Institute convened a civil society-led working group with additional representation from GHEITI, Ghana's OGP Steering Committee, parliament, and the Financial Intelligence Centre.

At the same time, building on the momentum gathered from the GHEITI consultations on Beneficial Ownership disclosure obligations on Ghana, the Presidency also convened a government-led working group, made up of all the anti-corruption agencies, with additional representation from civil society, drawn from the Civil Society-led working group.

Though the two groups worked in silos, the representation from each side on the other, served the purpose of cross fertilising ideas on either side. The civil society working group appeared to have exerted some subtle pressure on government by its initiative and managed to secure the political commitment to meet the country's international obligations in respect of Beneficial Ownership disclosure. The commitment subsequently found expression in Ghana's position adopted in the run-up to the anti-corruption summit, with Beneficial Ownership placed firmly on the country's priority list.

On President's return from the summit, the two working groups continued to work, and this time intensified their engagement on how best to approach the implementation of the summit commitments, especially that of Beneficial Ownership disclosure.

Upon the recommendation of the Chief of Staff's office, a 5-member committee, drawn from the government-led working group, and which included a civil society representative, was charged with the responsibility of working with the Acting Registrar General to propose an amendment to the Companies' Act of 1963 to provide the legal framework for Beneficial Ownership disclosure in Ghana.

The draft amendment was eventually considered by Parliament, and passed in August, 2016, thus paving the way for implementation of a beneficial ownership disclosure regime in Ghana.

3.0 MATTERS ARISING FROM THE LEGISLATIVE FRAMEWORK

3.1 How BO can support National Reforms in Ghana

With the passage of the Companies Amendments Bill, Ghana has set itself on a path to expanding the frontiers of transparency and accountability in public procurements, including natural resource contracts. Specifically, the objective of establishing a beneficial ownership register as it related to the extractive sector, is to support the following reforms in Ghana:

1. Promote good governance and accountability in the extractive sector and beyond
2. Support efforts to minimize and ultimately eradicate the risk of money laundering, financing of terrorism, financing the proliferation of mass destruction and other trans-national organised crime
3. Prevent illicit financial flows in the extractive and other sectors

3.2 Institutional Framework for BO Disclosure

The passage of the Companies (Amendment) Act 2016 (Act 920) lays a firm legal basis for collecting and maintaining a national database on beneficial owners and their nature of interests including the details of the legal arrangements in respect of the levels of interest held in companies registered in Ghana. The law mandates the Registrar General's Department to be the institutional body responsible for the collection and maintenance of Beneficial Ownership register in the country.

- Companies who bid: with regards to the extractive sector, companies who can bid for oil blocks will be required to be incorporated in Ghana. As such, the Registrar General's Department will collect and maintain information on their beneficial owners. In the mining sector, Ghana does not operate under a competitive bidding system and therefore companies who apply for mining licenses and lease are also required under the Minerals and Mining Act, 2006 (Act 703) to be incorporated in Ghana.
- Companies who operate: The Registrar General's Department will be responsible to collect and maintain all beneficial ownership information on all companies who operate in extractive assets in Ghana

- Companies who invest in extractive assets: Beneficial ownership register maintained by the RGD will capture all companies that invest in extractive assets in Ghana

3.3 Defining Beneficial Ownership (BO) and Politically Exposed Persons (PEPs)

The First Schedule to the Companies Act, 1963 (Act 179) has been amended to define a beneficial owner in a much broader sense, taking into accounts definitions provided by EITI and the FATF standards. In the context of Ghana, a Beneficial Owner, as stipulated in the Companies (Amendments) Act, 2016 now means “an individual

- (a) Who directly or indirectly ultimately owns or exercises substantial control over a person or company;
- (b) Who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
- (c) On whose behalf a transaction is conducted; or
- (d) Who exercises ultimate effective control over a legal person or legal arrangements”

3.4 Reporting Obligations for Politically Exposed Persons (PEPs)

In Ghana, the national policy objective is for public office holders under the Public Office Holders (Declaration of Assets and Disqualification) Act 1998 (Act 550) to declare all assets owned and liabilities owed either directly or indirectly to the Auditor General. However the disclosures are not always enforced and are not publicly available. Participants at the post London Anti-Corruption Summit held on 14th June strongly proposed the strengthening of asset declaration systems, verification and publication of the assets declared as well as assets of close relatives and immediate family members. In recent times the Electoral Commission has attempted to make asset declaration one of the eligibility criteria for aspirants of parliamentary and presidential positions for the upcoming national elections.

The definition of beneficial owner as stipulated in the Companies (Amendment) Act, 2016 includes:”

- (a) A person who is or has been entrusted with a prominent public function in this country [Ghana], a foreign country or an international organization, including
 - (i) Head of State or Head of government
 - (ii) Senior political, government, judicial, or military official
 - (iii) A person who is or has been an executive in a foreign country of a state owned company; and
- (b) A person who is or has been a senior political party official in a foreign country and includes any includes any immediate family members or close associates of that person”

3.5 Level of Details to be Disclosed

The Third Schedule to the Companies Act 1963 2016, (Act 920) as amended requires the following personal particulars of every beneficial owner to be included into the Central Register

- (a) The full name and any former or other name;
- (b) The date and place of birth
- (c) The telephone number;
- (d) The nationality
- (e) Residential, postal, and email address, if any;
- (f) Place of work and position held; and
- (g) The nature of interest including the details of the legal arrangement in respect of the beneficial ownership.

The amended Act does not stipulate the materiality threshold of interest that requires disclosure, which pre-supposes that whatever the level of interest, disclosure is required. Indeed, during the GHEITI/OGP stakeholder consultations, it was agreed that disclosures cover all levels of interest, because, depending on the size of the company, even a 0.5 percent ownership could be substantial enough to warrant disclosure.

Pending the implementation of the legislative mechanism, GHEITI will collect BO information from the companies using the EITI International Secretariat’s BO collection form as a guide.

3.6 Data Collection

The data as indicated by the Companies (Amendment) Act, 2016 (Act 920), will be collected by the RGD. This will be done at the incorporation of businesses. Existing companies however will be required to provide the RGD with Beneficial Ownership information during their annual filing of returns. Again companies are required to maintain details of their beneficial owners and update the RGD within 28days of any change.

The RGD will update the existing company's registration forms to include a section on BO and keep a register of beneficial owners.

GHEITI will continue to collect beneficial ownership information from companies and other government stakeholders, if available until the abovementioned mechanism becomes fully operational. Although the EITI Standard's deadline for BO disclosure is 2020, GHEITI expect the RGD BO disclosure mechanism to be fully operation before the deadline.

3.7 Ensuring Data Accuracy

The authenticity and accuracy of data provided by companies is crucial to EITI reporting as well as meeting other international obligations. As a check on the validity of data, particularly for the extractive sector and for EITI reporting purposes, cross verification of data with other data sources would be undertaken by GHEITI.

The Companies (Amendment) Act, 2016 (Act 920) also provides some assurance of data accuracy by criminalising the disclosure of false information. The amendment to the Act prescribes sanctions for wrongful declaration of information by companies which includes two years' imprisonment upon summary conviction or a fine of 25 penalty units.

GHEITI will ensure all data provided by companies in the interim are endorsed by company's senior official or a senior legal counsel.

3.8 Data Timeliness

Although the requirements for beneficial ownership disclosure does not provide indicative timelines for data collection, Beneficial Ownership information for Ghana, as already indicated in the preceding sections will be collected on annual basis. At the post London stakeholder engagement, the GHEITIMSG and participants agreed that BO data will be collected at the inception of companies and during annual filing of returns. Entities will again be required to provide such information to the RGD and to update their records within twenty-eight days of any changes in beneficial ownership.

In addition to above, GHEITI reports will provide annual updates on Beneficial Ownership information on all its reporting companies.

3.9 Data Accessibility

One critical component of EITI is for data to be readily accessible by the general public. In respect of this, the Companies Amendment Act 2016 (Act 920) which provides the legal basis for Beneficial Ownership disclosure in Ghana provides the names of beneficial owners shall be open to the public at a prescribed fee while all other detailed information will be open to only competent authorities¹. The expectation however is that, constitutional provision in respect to the right of citizens to public information, as well as the Right to Information Bill (when passed into law) will facilitate access to Beneficial Ownership information by the wider public.

With a new Companies Bill readying to be tabled again in the next Parliament in 2017, GHEITI will work with other key stakeholder, particularly civil society and other partner organizations to further advocate for some basic information (name, nationality, nature of ownership or control, residency), if not detailed, in the register to be open to the public.

¹ Competent authority as defined in the law means a public authority with designated responsibilities for combating money laundering or terrorist financing, in particular the Financial Intelligence Centre and any other authority that has the function of investigating or prosecuting money laundering and associated predicate offences and terrorist financing.

4.0 IMPLEMENTATION PHASE / ACTUALISATION PHASE OF GHANA'S ROAD MAP

The next phase of Ghana's road map for instituting a BO disclosure regime in the country will involve the building of capacity for the implementation agency and reporting entities, sensitization of stakeholders, including civil society, on the new disclosure regime, what it seeks to achieve, and how to access BO information to combat corruption and the incidence of conflict of interest in public procurements, especially in EI contracts.

4.1 Capacity Building

As part of efforts to ensure the smooth implementation of the BO provisions in the Companies (Amendment) Act, 2016 (Act 920) there will be the need to undertake capacity needs assessment of the RGD and to support the Department to put in place the needed infrastructure for capturing, storing, managing, and retrieving BO data. The Acting Registrar General has already indicated that its data capturing templates (in both electronic and hard copy formats) will have to be re-designed. The data storage facility will also need to be provided, as well as training staff who will manage the database.

GHEITI itself will need to acquire a good understanding of the BO provisions in the amended Act and so a workshop on the Act, aimed in part at identifying potential implementation challenges becomes an imperative.

GHEITI will then proceed to organise sensitization workshops across the country to create awareness of the BO provisions in the amended companies Act. Additionally, media engagements, to deepen awareness and to let the citizenry understand the importance of BO disclosure in the fight against corruption, and tax abuse especially in the extractive sector, would be undertaken. Information, Communication and Education (ICE) materials such as flyers, posters, and briefing papers on Beneficial Ownership would be developed.

4.2 Technical and Financial Assistance

Funding and technical assistance will be critical to the smooth implementation of the roadmap. Consequently, GHEITI having identified this as a possible challenge particularly with respect to the provision of IT infrastructure for the RGD has engaged STAAC (a U.K. technical assistance programme in the fight against corruption) on the issue. Consultations are also underway with other agencies such as the Ghana Oil and Gas for Inclusive Growth (GOGIG), the GIZ, the NREGI, and DFID to support the process. In all, it is estimated that an amount of US\$1,177,000 including direct support to help RGD address its capacity needs, as detailed in the activity plan will be required for the implementation of the roadmap. With regards to RGD's, there will be a need for a capacity, technical, and infrastructure needs assessment in order to have a fair idea about the cost to establish the register.

4.3 Deadline for Roadmap Activities

With the herculean task of providing a legal basis of beneficial ownership disclosure having been surmounted, the completion of the outstanding activities as indicated in Annex 1 will facilitate the process for full BO disclosure implementation in the country. The expectation is that by the end of 2017 Ghana would have fully complied with its obligation to institute a BO disclosure regime.

Annex I: The New Beneficial Ownership Roadmap Activity Plan

NO.	ACTIVITY	TIMELINE	OBJECTIVE	EXPECTED OUTCOME	STATUS	ESTIMATED COST (US\$)	RESPONSIBILITY
1.	Define beneficial owner and Politically Exposed Persons		To codify express definitions of <i>'beneficial owner', 'Politically Exposed Persons' 'control' and 'contract'</i>	BO and PEPs defined	Completed		MSG
2.	Undertake capacity needs assessment of the RGD and provided the needed support (Procurement of software, installation, training & other related activities)	March, 2017	To enable the collection and effective maintenance of beneficial ownership data	Capacity needs identified and addressed for smooth implementation of legislative provisions in respect of BO disclosure	Outstanding	Cost to be established in collaboration with RGD and on the basis of identified needs. However, according to the Registrar General's Dept. about \$1,000,000 will be needed.	MSG and RGD

3.	Engagement with RGD and the AG's office to draw up modalities for public access to beneficial ownership data	October, 2016	To enable the general public have easy access to some basic beneficial ownership information	Some basic information on BO accessible to citizens	Ongoing	12,000	MSG and RGD
4.	Organise a technical workshop for BO stakeholders to identify potential implementation challenges to the provisions in respect of BO disclosure in Ghana and recommend remedial measures.	May, 2017	To avert conflict with existing laws	Achieve compliance with the provisions	Outstanding	25,000	MSG
5.	Develop Information, Communication, and Education materials on BO	July, 2017	To inform the public on the tenets of beneficial ownership	An informed public complimenting the fight against corruption and conflict of interest in natural resource contracting.	Outstanding	40,000	MSG

6.	Organize media engagements at both the national and local levels	July, 2017	To inform and educate the public through media platforms on the tenets of beneficial ownership	Deepened public appreciation and ability to use BO information to unearth corruption in natural resource contracting.	Outstanding	60,000	MSG/RGD
7.	Implementation and sensitization workshop in Southern Zone	June, 2017	To educate the public on the existence of beneficial ownership regime and its importance	A better informed public, that hold duty-bearers to account	Outstanding	30,000	MSG/RGD
8.	Implementation and sensitization workshop in Middle Zone	August, 2017	To educate the public on the existence of beneficial ownership regime and its importance	A better informed public, that holds duty-bearers to account	Outstanding	30,000	MSG/RGD
9.	Implementation and sensitization workshop in Northern Zone	September, 2017	To educate the public on the existence of beneficial ownership regime and its importance	A better informed public, that holds duty-bearers account	Outstanding	30,000	MSG/RGD

10.	Develop the capacity of CSOs to undertake public monitoring of BO data, changes over time, and how to use BO data to monitor contractual procedures, identify conflict of interests, and corruption risks	September, 2017	To improve the capacity of civil society to effectively utilize BO data	Civil society capacity needs addressed and BO data effectively utilised	Outstanding	50,000	MSG/Development partners (NRGI, GIZ), MSG
11.	Capacity building for extractive companies to familiarise themselves with BO concept, legislation, implementation and information they have to furnish to RGD	October, 2017	To improve the capacity of companies to enable them to comply with the BO legislation	Companies are well informed and able to furnish the RGD with appropriate BO data	Outstanding	20,000	MSG/Chamber of Mines and Chamber of Oil and Gas
	TOTAL BUDGET					1,297,000.00	

