

Legal approaches to beneficial ownership transparency in EITI countries

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1. A survey of beneficial ownership legislation from selected implementing countries

As of 1 January 2020, the EITI Standard requires that implementing countries request, and companies disclose, beneficial ownership information (Requirement 2.5). This requirement applies to companies that apply for or hold participating interests in a country’s extractive sector and requires disclosure of their beneficial owners, the level of ownership and details about how ownership or control is exerted. To achieve this Standard in most implementing countries, new legislation may be necessary to provide the government with authority to collect beneficial ownership information. In a few countries, however, it will be possible to build on existing laws combatting corruption, money laundering and terrorist financing which already require beneficial ownership disclosure.

This paper examines legislation concerning beneficial ownership disclosure from selected EITI implementing countries. The purpose of the survey is to inform multi-stakeholder groups about different legal approaches to beneficial ownership disclosure and to assist the EITI and partners to support countries considering updated or new beneficial ownership legislation. The survey compares the various laws examined and identifies gaps in legislation that may limit comprehensive beneficial ownership disclosure. The survey then provides recommendations on the level of detail to be considered in beneficial ownership legislation and how identified gaps may be filled to improve transparency.

While it may be too soon to determine best practices considering the newness of most beneficial ownership laws, the survey identifies provisions which appear more likely to increase disclosure of beneficial ownership information and overall transparency because of their structure and comprehensiveness. Examples of provisions and recommendations that could help countries make their beneficial ownership legislation more comprehensive and enforceable are provided.

2. Scope and methodology

This survey involved a desk review of beneficial ownership laws in 16 countries. The review was limited primarily to countries implementing the EITI Standard. Legislation from a few non-EITI countries was also reviewed to provide additional examples of requirements on beneficial ownership disclosure. The survey reviewed laws specific to the extractive sector, as well as non-sector specific legislation such as stand-alone beneficial ownership laws, company laws, anti-money laundering laws and anti-corruption laws. Specifically, the survey examined the following legislation:

- Company laws (Afghanistan, Ghana, Ukraine, United Kingdom (UK) and Zambia)
- Mining codes (Cameroon, Kazakhstan, Kyrgyz Republic, Malawi and Indonesia) and petroleum laws or regulations (Ghana, Indonesia and Liberia)
- Beneficial ownership laws (Indonesia, Kazakhstan, Peru and Ukraine)
- Other types of legislation (Colombia's Anti-corruption law, Republic of Congo's Law on Transparency in Public Finances, France's Commercial Code and Monetary and Financial Code, and Ukraine's Law on Financial Crimes)

For countries where beneficial ownership provisions are found in several laws, such other laws were included in the scope of the review (e.g. Ghana, Indonesia and Ukraine). The European Union's Anti-Money Laundering Directive (EU Directive) was also included because it provides guidelines to EITI implementing countries within the EU.

Some of the countries included in the survey (e.g. Kyrgyz Republic, Kazakhstan and Ukraine) are in the process of drafting bylaws or implementing rules. Where available, these additional authorities were included in the survey, however, authorities in certain of these countries, as well as others, appear incomplete. The evolving nature of beneficial ownership authorities impacted the survey, but should not preclude meaningful analysis. Further, laws were translated into English, which may have altered certain definitions and language, but this too should not be an impediment to useful analysis.

The survey focused on eight topics typically covered by beneficial ownership legislation, including: i) identification of the competent authority; ii) the definition of beneficial ownership; iii) identification of the reporting entities; iv) details on the beneficial owner's identity; v) data verification; vi) requirements for updating information; vii) sanctions for false or non-disclosure; and viii) rules on access to information. These are also the topics on which implementing countries often ask for support from the International Secretariat.

3. Beneficial ownership provisions from surveyed legislation

i) Competent authority

To ensure proper implementation and enforcement, legislation should clearly identify the agencies in charge of administering beneficial ownership disclosure. The EITI Standard states, where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing.

In the laws surveyed, the competent authorities varied, depending on the type of legislation. Corporate regulators are designated as competent authorities where beneficial ownership provisions are embodied in company laws (e.g. Afghanistan, UK and Zambia). For Indonesia and Ukraine, the responsibility falls on the Ministry of Law/Justice which has authority to regulate corporations. Indonesia's Presidential Regulation on Beneficial Ownership, however, mentions other competent authorities, even if in practice the beneficial ownership register is hosted by the Ministry of Law. In the case of sector-specific laws, the Mines Ministry (Cameroon, Malawi), the Petroleum Ministry (Ghana and Liberia) or the extractive sector's regulating ministry (Kyrgyz Republic) are considered as competent authorities. Other examples include the Clerk of Commercial Court (France) and the Ministry of Investment and Development (Kazakhstan). Republic of Congo and Peru do not specify the agencies in charge of administering beneficial ownership legislation.

Key takeaways and recommendations:

- While the competent authority responsible for collecting beneficial ownership information may vary across countries, implementing countries could consider clearly identifying in legislation the agency responsible for collection of beneficial ownership information, ensure legislation centralizes collection of beneficial ownership information and legislation specifies the agency responsible for verification of information and enforcement of violations. Poor identification of the responsible agency and/or mixed responsibilities amongst multiple agencies may result in gaps in beneficial ownership disclosure, verification and enforcement of violations.
- Vesting authority to implement beneficial ownership legislation on corporate regulators generally results in a broader scope of application covering most corporations in a country, as opposed to sector-specific legislation which is limited in scope to only corporations operating in the extractive sector. Each approach has its pros and cons depending on factors such as agency capacity, resources and political will. Implementing countries may wish to consider whether broader application of beneficial ownership legislation will be hindered by capacity/resource constraints, which could result in limited disclosure by corporations in the extractive sector.

ii) Beneficial ownership definition

The EITI Standard requires each multi-stakeholder group to agree on an appropriate definition of the term beneficial owner, referring to the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity (Requirement 2.5.f.ii). The definition should consider international norms and relevant national laws and should include ownership thresholds. The lack of appropriate beneficial ownership definitions has been identified as a key challenge in obtaining useful beneficial ownership data in EITI countries.

Across jurisdictions, the most common aspects of beneficial ownership definitions are shareholding/ownership interest, voting rights, economic interest and ability to hire and fire company officers. Several laws surveyed do not include a definition of beneficial ownership (e.g. Colombia, Republic of Congo, Kazakhstan, Liberia and Malawi). Several of these laws, however, refer to concepts like beneficial ownership. Legislation from Cameroon and Malawi refers to a “holder.” Kazakhstan does not define beneficial ownership but defines the concept of “control.” Legislation in Peru refers to a “final beneficiary.” Notably, laws without a definition were generally promulgated prior to the 2016 EITI Standard and are not specific to beneficial ownership disclosure.

Finally, some laws specify the scope of applicability of the beneficial ownership definition, such as in Cameroon, where the law states the definition applies to mining title applicants and holders, subcontractors and subsidiaries of these entities.

In legislation where definitions are included, beneficial ownership/owners are defined in terms of the following:

- **Shareholder / share capital / ownership interest / interest in mining title**

(Cameroon, EU, France, Indonesia, Kyrgyz Republic, Malawi, Peru, Ukraine, UK and Zambia)

- **Voting rights or ability to assign voting rights**

(Afghanistan, Cameroon, EU, France, Indonesia, Kyrgyz Republic, Kazakhstan, Ukraine, UK and Zambia)

- **Right to benefit / receipt of economic interest**

(Cameroon, Ghana, Indonesia, Kyrgyz Republic and Zambia)

- **Ability to hire and fire company officers**

(Indonesia, Kyrgyz Republic (“direct and/or indirect appointment and/or recall of the members of governing bodies”), Peru, UK and Zambia)

- **Right to decide**

(Peru, Ukraine - “decisive influence on management or economic activity”.)

- **Legal representative of entity**



(France)

- **On whose behalf transaction is conducted**

(Ghana)

- **Control**
 - *Direct and/or indirect*

(EU, France, Ghana, Kazakhstan, Kyrgyz Republic, Peru, Ukraine and Zambia)

- *Various forms*

(EU - “control via other means”, Ghana - “ultimate effective control”, Peru - “exercises another form of control over the legal person”), UK - “significant influence or control”, Zambia - “materially influence the management policy or affairs”).

1. The concept of “control”

Many laws include the concept of “control” within the definition of beneficial ownership and generally indicate either “direct” or “indirect” control or ownership are considered beneficial ownership. Most laws do not distinguish direct versus indirect control, however, indirect control appears to cover those situations where a person or entity is able to influence decision-making or ownership within a corporation through one or more intermediaries. Where indirect control is defined, such as in Kazakhstan, the concept is consistent with this understanding: “[i]ndirect control means the ability of a person, organization to control another organization through a third organization(s), between which there is the direct control.” Indirect control appears to provide a catchall in most legislation for situations where persons or entities exercise influence over a corporation outside of the common share/capital ownership and voting rights mechanisms.

2. Thresholds

Most legislations include a threshold in their definitions whereby a natural person who directly or indirectly holds a minimum percentage of ownership or control of the company is considered a beneficial owner. The thresholds for what level of share/capital ownership constitutes direct beneficial ownership vary between countries, ranging from 5%- to 25%. Other countries provide thresholds on the level of voting rights that constitute direct beneficial ownership, ranging from 10%- 25%. Some countries provide the level of profit-sharing that results in beneficial ownership (Indonesia). As another example, Kazakhstan provides “direct control” results when a person/organization receives more than 25% of the distributed net income from the subsoil user. Examples of thresholds are presented in the table below.

Countries	Threshold
Cameroon, Malawi	≥ 5% of share/capital ownership

Kyrgyz Republic, Peru	≥ 10% of share/capital ownership
Ukraine, UK	≥ 25% of share/capital ownership ≥ 25% of voting rights
Indonesia, Kazakhstan	≥ 25% of share/capital ownership ≥ 25% of voting rights ≥ 25% of profit-sharing / distributed net income

3. Natural persons

Many laws do not clearly state the “beneficial owner” should always refer to a natural person (Afghanistan, Cameroon, Colombia, Republic of Congo, Kazakhstan, Liberia and Malawi). Jurisdictions that explicitly mention natural persons or individuals when referring to beneficial owners include the EU, France, Ghana, Indonesia, Kyrgyz Republic, Peru, Ukraine, UK and Zambia.

4. Close associates or family members

Some countries address the issue of close associates or family members in their laws on beneficial ownership. Ghana’s law provides rules on considering close associates or family members as beneficial owners but only with respect to politically exposed persons. Malawi’s law states if the shares are in the name of a public officer’s wife or husband, then the public officer is deemed as the presumptive ultimate holder of the rights arising from those shares.

5. Presumptions

Some laws contain provisions that create presumptions of beneficial ownership. In France, managers of partnerships/companies and presidents of simplified joint stock companies are presumed as beneficial owners. Peru’s beneficial ownership law states, in the case where no beneficial owner can be identified based on the criteria, the natural person who holds a similar or equivalent position as those who own 10% of capital shall be deemed a beneficial owner.

6. References to politically exposed persons (PEPs)

The EITI Standard states the definition of beneficial ownership should specify reporting obligations for PEPs (Requirement 2.5.f.i). The laws surveyed do not define reporting obligations for PEPs, although some laws refer to PEPs in various provisions. The EU Directive mentions the need to have risk management systems in place applicable to PEPs. Ghana’s Companies Act lists the individuals who are considered PEPs, including those holding prominent public functions in

and out of Ghana and in international organizations, senior political party officials and close associates and immediate family members of PEPs.

Key takeaways and recommendations:

- The legislation surveyed contains a broad range of definitions for beneficial ownership. Not all these definitions refer to natural persons or individuals, as required by the EITI Standard. Further, few of these definitions address the use of close associates and family members to hide ultimate beneficial owners, although reference to control in many definitions may encompass such associates/family members. It is recommended that implementing countries ensure that legislation clarifies what direct or indirect control mean. This could include consideration of the types of ownership and control that should be addressed (e.g., shareholding/ownership interest, voting rights, etc.) and specifying that beneficial owners are “natural persons.” Implementing countries could also refer to further guidance from the International Secretariat on implementing beneficial ownership disclosure, which include model beneficial ownership provisions .¹
- Reporting thresholds also vary across countries, applying to levels of ownership, control or economic benefits. It is important that such thresholds are established taking into account the corporate structure of the companies operating in the country, an individual’s full aggregated interest as well as different means of exercising ownership and control. To ensure comprehensive disclosures of the beneficial owners of a company, countries could consider applying thresholds regardless of how ownership or control is exercised. For example, in addition to applying to cases where a person maintains ownership via a percentage of shares, the threshold could also apply to where a person maintains a percentage of control over the company (via powers of attorney, contractual arrangements, etc).
- PEPs are rarely mentioned in beneficial ownership provisions, although the EITI Standard states such provisions should specify reporting obligations for PEPs. While certain countries address PEPs in separate legislation, there is a need to add and/or link reporting obligations for PEPs in most legislation. Implementing countries could consider opportunities to link their beneficial ownership disclosures under the EITI Standard with existing reporting obligations for PEPs such as mandatory asset declarations.
- The types of legislation that include a definition of beneficial ownership vary between countries. Legislation enacted specifically for beneficial ownership disclosure (e.g. Indonesia, Peru and Ukraine) and enactments aimed at addressing illicit financial flows (EU, France and UK) generally provide a more detailed definition of beneficial ownership than more general anti-corruption laws. To support comprehensive reporting of beneficial

¹ EITI guidance on implementing beneficial ownership disclosure is available here: <https://eiti.org/document/guidance-on-implementing-beneficial-ownership-disclosure-slides-group-exercises>

ownership in the extractive industries, implementing countries could enact specific legislation or amendments to legislation to address beneficial ownership disclosure.

iii) Reporting entities

Most surveyed legislation identified the entities responsible for reporting beneficial owners. Typically, corporate entities are obliged to report², while some jurisdictions further require other legal entities, like partnerships, firms, trusts and individual entrepreneurs to report.³ France, Indonesia and Zambia distinguish between corporations incorporated in the country and those incorporated elsewhere. The individuals tasked with the obligation to report typically include company directors (Afghanistan), holders or applicants for mining titles or concessions (Cameroon, Colombia, Indonesia, Kazakhstan, Kyrgyz Republic, Liberia and Zambia), subcontractors (Cameroon) and company managers (Indonesia). Sometimes the duty is imposed on legal practitioners (Zambia) and public notaries (Indonesia). The EU Directive requires “corporate and other legal entities” to keep records of their beneficial owners and for the beneficial owners themselves to provide such entities with the information necessary to comply with disclosure requirements.

In instances where beneficial ownership provisions are contained in extractive sector-specific legislation, the disclosure of beneficial owners is generally tied with the license/title application process (Cameroon, Indonesia by regulations, Kazakhstan, Kyrgyz Republic, Liberia and Malawi). It is unclear, however, whether the information would be evaluated as part of the application process in these countries. Finally, while the EITI Standard states each entity of a joint venture should disclose its beneficial owners, the legislation surveyed does not appear to specifically address disclosure by joint ventures.

1. Data collection and retention procedures

Of the legislation surveyed, only the law from Peru and the EU Directive specifically mention data collection and retention procedures. Peru’s law states entities should implement internal procedures to obtain and retain beneficial ownership information and requires filing of an affidavit of beneficial ownership information pursuant to Peru’s Tax Code. The EU Directive leaves it to member countries to decide the data collection procedures, but requires the information be maintained in a public national registry. While legislation in few countries mentions data collection and retention procedures, this may be an administrative/procedural aspect of the law which countries will address in regulations or internal guidance.

2. Exemptions

Some legislation surveyed provides exemptions to beneficial ownership reporting. Examples of exempt entities are companies listed on a regulated market already subject to adequate disclosure requirements (EU and UK); publicly listed companies (France); and political parties, art unions, lawyers’ associations, chambers of commerce/industry and local self-government entities (Ukraine).

² E.g. EU, France, Ghana, Indonesia, Liberia, Peru, Ukraine, UK and Zambia.

³ E.g. EU, France, Indonesia, Peru, UK and Ukraine.

Key takeaways and recommendations:

- The obligation to report is most often imposed by law on corporate entities, however, individuals within a corporation who are tasked with reporting are sometimes unspecified and can vary. Some laws indicate corporate officers and directors shall report, while other laws provide legal practitioners and public notaries can report. Beneficial owners themselves may also be required to report. The determination of who shall report is closely linked to the issue of who will be held liable for non-disclosure and/or false disclosure and depends on who has actual knowledge of the decision-making processes and ownership of the corporation. These are important factors to consider in deciding who is obligated to report. Implementing countries could consider indicating what entities and which individuals within corporate entities are obliged to submit information on beneficial ownership to ensure that responsibilities and liabilities for providing comprehensive and correct information are clear.
- In reaching out to and providing guidance to reporting entities, implementing countries could educate corporations on beneficial ownership legislation and assist them in setting up reporting processes and protocols to ensure accurate, timely and adequate disclosure, and to minimize liability.
- In countries where beneficial ownership disclosure is tied to the license/title application process, it was not clear whether non-disclosure and/or false disclosure would be considered in evaluating an application. Where applicable, implementing countries could further consider whether and how beneficial ownership information will be reviewed or evaluated as part of licensing/title application processes to ensure verification takes place.
- Implementing countries could ensure that data collection procedures consider data retention, and that the procedures are not too cumbersome and repetitive. Links with existing data collection processes, e.g. annual company reports could be explored.
- Exemptions to disclosure under specific beneficial ownership legislation appear suitable, so long as disclosure occurs through another mechanism, such as regulations controlling certain markets and public traded companies. The EITI Standard, however, requires that publicly listed companies at least disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed, on the assumption that beneficial ownership information is accessible from such filings. Exemptions should be examined in context where there is no other mechanism in place for disclosure, and where provided they should be clear and strictly construed.

iv) Details about the beneficial owner's identity

Under the EITI Standard, the information about the identity of the beneficial owner should include the name of the beneficial owner, nationality, country of residence and identification of whether the owner is a politically exposed person (Requirement 2.5.d). It is also recommended that the national identity number, date of birth, residential or service address and means of contact are disclosed. Box 1 presents examples of the types of information on beneficial owners required by the laws included in the survey.

1. Beneficial owner information

Many of the laws surveyed were unclear about the specific information required on a beneficial owner's identity (Afghanistan, Cameroon, Colombia, Congo, Kyrgyz Republic, Liberia). The laws which require specific information, however, generally require most of the information sought under the EITI Standard. Some countries specify that first and last names are required, as well as patronymic names and pseudonyms. Some countries require an explanation of the nature and extent of beneficial interest or the way in which control is exercised over the relevant entity, among other information required for individuals and corporations. Only two laws appear to require disclosure of the date an individual becomes a beneficial owner (France and UK). Importantly, many laws require information to prove identity such as an ID number, passport number, driver's license and/or tax identification number. Countries with laws that fall short of the EITI Standard's information requirements for beneficial owners may address shortcomings and provide additional detail in regulations, but that has yet to be determined.

2. Company information

A few laws surveyed require certain information regarding corporations to be provided as part of their beneficial ownership disclosure requirements, including: the corporate name or trade name (France, Kazakhstan and Malawi); legal form (France); address of registered office (France); identification number (France); place of incorporation (France and Malawi); verification of registration as a legal entity (Kazakhstan); names and nationality of the directors or equivalent officers (Malawi); information about executives (Kazakhstan); relationship between the corporation and the beneficiary, with supporting documents (Indonesia); structure of ownership (Ghana); and full name and identification code of founder of legal entity (Ukraine).

Box 1: Details of beneficial owner information required by laws included in the survey

- **Name** (EU, France, Ghana, Malawi, Indonesia, Ukraine, UK and Zambia)
- **Name used, pseudonym** (France)
- **First names** (France, Kazakhstan, Kyrgyz Republic and Peru)
- **Last name** (Kazakhstan, Kyrgyz Republic, Peru and Ukraine)
- **Patronymic** (Kazakhstan, Ukraine)
- **Date of birth** (EU, France, Indonesia, Ukraine, UK and Zambia)
- **Place of birth** (France and Indonesia)
- **Country of residence** (EU, Ghana, Kazakhstan, Peru, Ukraine, UK and Zambia)
- **Nationality/citizenship** (EU, France, Ghana, Kazakhstan, Malawi, Indonesia, Ukraine, UK and Zambia)

- **Personal address of beneficial owner** (France, Ghana, Indonesia, Ukraine, UK and Zambia)
- **Service/registered address** (France, Kazakhstan and UK)
- **Foreign address** (Indonesia)
- **Nature/means of control** (France, Ghana and UK)
- **Nature of ownership, relationship between owner and company** (EU, France, Ghana, Indonesia, UK and Zambia)
- **Particulars of the person in whose name the share is registered** (Zambia)
- **Date of becoming a beneficial owner** (France and UK)
- **Information on identity documents**, e.g. identification number, passport number, driver's license number or taxpayer identification number (Kazakhstan, Indonesia, Peru and Ukraine)
- **Company/trade name** (France, Kazakhstan and Malawi)
- **Corporate/legal form and identification** (France and Kazakhstan)
- **Information about executives** (Kazakhstan and Malawi)

Key takeaways and recommendations:

- Consistent with the EITI Standard, those laws requiring specific information on beneficial owners generally required the name, nationality, country of residence and birthdate of the beneficial owner, among other identifying information. Implementing countries could ensure beneficial ownership legislation or supporting regulations specify the minimum information required concerning beneficial owners and ensure this information is requested from and disclosed by companies (i.e. the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons).
- Further, implementing countries could consider how best to collect beneficial ownership information, including use of existing beneficial ownership disclosure templates which collect information in a clear and consistent manner, and from which data can be readily used by international organizations.
- Many laws require proof of identity (e.g. passport number, tax identification number, etc.), which may raise disclosure concerns because of the private/sensitive nature of the information. It is unclear whether this information will be disclosed to the public. As a

result, implementing countries could consider this issue and ensure corporations and individuals are aware about what information would be disclosed to the public.

- Most laws do not require provision of supporting documents which may be useful as a means of ensuring and verifying the accuracy of information. Implementing countries could consider whether requisition of supporting documents would assist with ensuring and verifying beneficial ownership information.

v) Data verification

The EITI Standard states the multi-stakeholder group should agree on an approach for participating companies to assure the accuracy of the beneficial ownership information they provide (Requirement 2.5.e). The Standard suggests this could include requiring companies to attest to the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or by submitting supporting documentation.

While legislation in a few countries surveyed tracks these suggestions from the EITI Standard and other legislation provides additional data verification mechanisms, laws from several countries do not address data verification (Afghanistan, Cameroon, Colombia, Congo, Kazakhstan, Kyrgyz Republic and Ukraine). The law in Kazakhstan simply states review and approval of the application containing beneficial ownership information is required, but it is unclear if an application would be rejected if such information is incorrect or not provided. Examples of data verification mechanisms found in the laws surveyed are provided in Box 2.

Box 2: Examples of data verification mechanisms from laws included in the survey

- Requirement that information is adequate, accurate and current (EU);
- Reporting entities and competent authorities must report discrepancies between information in central register and information known to them concerning beneficial owners (EU);
- Notarization of the statement on details of beneficial owner (Ghana);
- Refusal to register company filing if information is incorrect (Ghana);
- Declaration/statement of company attesting to correctness of information (Indonesia and Zambia);
- Corporation shall verify data through support documents (Indonesia) (e.g., articles of incorporation, documents from shareholder/board meetings, information from agencies/institutions, statement by officers/directors, etc.);
- Audit of the company by agency in case of need (Indonesia);
- declaration/statement of company attesting to correctness of information (Indonesia and Zambia);

- Register shall be rectified where there is a mistake or incorrect information (Malawi);
- Verification through documents, data and adequate and reliable information (Peru);
- Multi-stakeholder group has power to oversee disclosures (Ukraine);
- Company must confirm beneficial owner's information (UK);
- Registrar to ensure beneficial ownership is known, ascertained and verified (Zambia); and
- Registrar may serve notice on company to furnish information and may investigate (Zambia).

1. When to verify

Most laws aside from the EU Directive are silent on when verification should be conducted. Where verification is part a license/title application process, it is unclear how data would be verified and whether evaluation of an application would include verification of beneficial ownership information.

2. Who should verify

Most laws are also silent on who should verify data. Ghana and Zambia link the verification process with company registration, thus implying the registrar has the duty to verify. In cases where disclosure is linked to license/title application, it is unknown whether the authority that evaluates applications has the necessary competence and capacity to verify beneficial ownership data.

Key takeaways and recommendations:

- Most legislation surveyed provides few details about beneficial ownership verification. There is little direction on who should verify beneficial ownership data, when such data should be verified and how such data should be verified. Further, it is generally unclear which agency has the authority and what the scope of such authority is in terms of the agency's ability to inspect corporate records and require companies and/or beneficial owners to provide supporting documents. In line with the EITI Standard, implementing countries should agree on, and ideally set forth in legislation, an approach for verifying beneficial ownership information. This may include legal provisions to provide agencies with the authority to inspect corporate records and require companies and/or beneficial owners to provide supporting documents. Companies could also be required to attest to the accuracy of information provided concerning beneficial ownership.

vi) Updating information

Updating beneficial ownership information is crucial to ensuring accuracy of the data, given that beneficial owners can change over time. In the laws surveyed, the period for updating information

varies. Some laws cite a specified period ranging from three days (Indonesia), to 14 days (UK and Zambia), to 28 days (Ghana), to 30 days (France and Kazakhstan), to 45 days (Liberia) from the date of the change or the date when the change was known, depending on the circumstance. Other laws link the duty to update with license renewals (Kyrgyz Republic and Malawi) or annual reporting (Afghanistan and Indonesia), while some laws are silent on the requirements for updating beneficial ownership information (Cameroon, Colombia and Republic of Congo).

The law in the UK defines what constitutes a “relevant change” and in certain circumstances requires the beneficial owner to notify a company of a change in beneficial ownership information. In most laws surveyed, however, the duty to report is imposed only on companies. Further, most laws do not specify the process for updating, although this could be inferred from the general requirements on filing beneficial ownership information provided in legislation.

Key takeaways and recommendations:

- The laws surveyed do not provide a standard period for updating beneficial ownership information, nor, apart from the law in the UK, do they specify what type of change in information triggers the requirement to update (e.g. change of beneficial owner, change of level of ownership, change of voting rights, change of name or contact information, etc.).
- Implementing countries could consider the appropriate period for updating beneficial ownership information as well as what types of information changes should trigger an update of such information.

Implementing countries may also wish to examine whether rules on existing company reporting that require updates as part of annual reporting or license renewals are timely enough to ensure up-to-date beneficial ownership information, and consider ways of monitoring whether the data is up-to-date.

- Lastly, implementing countries could consider whether imposing the duty to update on beneficial owners themselves, as in the UK, would be more effective than requiring imposition of the duty only on companies.

vii) Sanctions for false or non-disclosure

1. Penalized acts

The acts typically penalized in the laws surveyed are included in Box 3. The laws surveyed did not all provide penalties specific to violations of beneficial ownership requirements. Many countries (e.g. Afghanistan, Cameroon, Kazakhstan, Liberia and Malawi) have general penalty provisions, which could be applicable to violations of such requirements. The EU Directive does not prescribe specific sanctions, but states any resulting sanction or measure for violation of the Directive “shall be effective, proportionate and dissuasive[,]” and may be criminal or administrative.

Box 3: Examples of the acts typically penalized in laws included in the survey

- Failing to provide required information (Ghana, Ukraine and UK);

- Filing of false, fraudulent or misleading information (Afghanistan, Cameroon, Ghana, Indonesia, Liberia and Peru);
- Filing of inaccurate, incomplete or inconsistent information (Colombia, France, Kyrgyz Republic, Liberia and Ukraine);
- General default or failure to comply with requirements (Indonesia, Malawi and Zambia);
- Failure to respond to information requests or to produce documents (France and Zambia);
- Failure to update information (UK and Zambia); and
- Failure to timely provide required information (Ukraine).

2. Types of sanctions

The types of sanctions in the laws surveyed include administrative, civil and criminal sanctions. Administrative sanctions include denial of license (Malawi), revocation or termination of license or concession (Cameroon, Colombia, Indonesia, Kazakhstan and Kyrgyz Republic), and refusal to grant renewal of license (Malawi). Civil sanctions include fines ranging from a low end of approximately USD0.35 (Malawi) and USD350 (Ghana), to a mid-range of USD8,400 for an individual and USD42,000 for a company (France), up to a high end of USD100,000 for an individual and USD1,000,000 for a company (Liberia). Cameroon, Ukraine and the UK also impose mid-range fines. Certain countries differentiate the penalties for individuals and companies (France, Ghana and Liberia). Criminal sanctions include imprisonment with the shortest period being three months (Cameroon) and the longest period being five years (Zambia). Some laws do not contain specific sanctions for violations of beneficial ownership requirements and instead refer to penal codes outside legislation on beneficial ownership (Afghanistan, Indonesia and Peru). Other countries do not specify a penalty (Republic of Congo and EU).

3. Who is liable

In almost all laws, liability is imposed on the declarant, who may be an individual or company, depending on the law. Some laws, however, extend liability to the head of the legal entity (Ukraine), to officers of the company (Ghana, UK and Zambia) or to the beneficial owner (UK).

Key takeaways and recommendations:

- The acts penalized under the laws surveyed address most potential violations of beneficial ownership requirements, except few laws appear to impose sanctions for failure to update beneficial ownership information.

- A combination of administrative, civil and criminal sanctions was typical, with a range for amount of fine and length of sentence, depending on the country and whether the violator is an individual or company.
- Implementing countries that do not provide penalties specific to violations of beneficial ownership requirements or which have general penalty provisions, could specify penalties and/or clearly reference general penalty provisions. This could ensure that individuals and companies are fully aware of such penalties and are deterred from violating beneficial ownership requirements as a result.
- Implementing countries could consider clearly identifying the party liable for violations, and adopt and identify a range of appropriate and realistic sanctions adequate to deter violations of beneficial ownership reporting requirements.

viii) Public access

The EITI Standard recommends implementing countries maintain a publicly available register of beneficial owners (Requirement 2.5.a). Further, it is required that as of 1 January 2020, implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report (Requirement 2.5.c). The intent of the latter provision is to make beneficial ownership information in implementing countries publicly available, however, where such information is already publicly available, the EITI Report need only include guidance on how to access the information.

Laws in the following countries have explicit provisions allowing public access to beneficial ownership information: EU (subject to limited exemptions), Indonesia, Kazakhstan, Kyrgyz Republic, Ukraine and the UK. Although it is not always clear, this access is generally predicated on request for access (online registration or filing request for access) or payment of an administrative fee. For example, the UK requires payment of a prescribed fee to access a company's register, while the EU Directive provides access to national registers may be subject to a fee, not to exceed the administrative costs of making the information available, including costs of maintenance and development of the register. Under these laws, the authority collecting the beneficial ownership information is generally the one with the duty to publish/provide access to such information.

Laws in other countries allow access to beneficial ownership information on a restricted basis. For example, France provides access to certain judicial and government officials and personnel, and law enforcement; Ghana provides access to "relevant authorities;" and Peru provides access to "competent authorities." Access in Indonesia is subject to existing laws on disclosure of public information. Other laws, such as those in Colombia and Zambia, state measures/rules on access will be adopted/prescribed. Some laws appear to provide a certain level of access, but the laws are so general (Colombia, Republic of Congo, Liberia and Malawi) or limited in scope (Afghanistan), that their applicability to beneficial ownership information is unclear. It is also unclear what access is allowed in countries like Cameroon.

A few laws prevent access to certain private/sensitive information, as in the EU Directive and the UK, where access may be limited if the information would subject the beneficial owner to disproportionate risk, and in Ukraine, where taxpayer account numbers and other account

information of the beneficial owner is not accessible. With these exceptions, few of the laws surveyed contained specific confidentiality provisions.

Key takeaways and recommendations:

- None of the laws surveyed allow full, unconditional public access. Some laws require filing of a request, registration or payment of a fee to access information. Other laws permit access only for certain judicial, government or law enforcement personnel. Certain laws contain exemptions and/or limit the type of data that is provided.
- Implementing countries could consider spelling out and simplifying filing/registration and fee payment processes, as well as keeping fees low and providing guidelines for fees, so they are not an obstacle to public access.
- Implementing countries which have access restrictions could consider expanding access to the public.
- Implementing countries that have general laws on access or are still developing measures/rules on access could develop and clarify public access provisions.
- Implementing countries that have exemptions and/or confidentiality provisions could ensure that such provisions are sufficiently detailed to prevent abuse and provide beneficial owners confidence that private/sensitive information will properly be excluded from access. Countries can also consider harmonising other laws restricting public access (e.g. data privacy laws) with public beneficial ownership disclosure requirements.
- Implementing countries could clearly identify the agencies which are responsible for disclosure as well as the individuals and entities liable for non-disclosure, so all parties are aware of potentially liability for violations.

4. Conclusions and recommendations

Legislation from the 16 EITI implementing countries surveyed runs the gamut in terms of detail and consistency with the EITI Standard. In general, laws concerning beneficial ownership disclosure enacted prior to development of the EITI Standard on beneficial ownership lack detail on beneficial ownership disclosure and do not meet the EITI Standard. This is not surprising considering these laws were enacted for other reasons, such as incorporation (Afghanistan), regulation of mining/oil and gas (Cameroon, Liberia and Malawi) and anti-corruption (Colombia). Although enacted after the development of the EITI Standard, Republic of Congo's law on transparency in public finances likewise was not enacted for beneficial ownership disclosure. Specific legislation on beneficial ownership disclosure is recommended in these countries to support implementation of the EITI Standard.

Tracking the EU Directive, France and the UK have laws on beneficial ownership disclosure which appear to exceed the EITI Standard in level of detail. These laws, while comprehensive, are complex and depend upon the institutional capacity, funding and management already in place in France and the UK, as well as the capability of companies in these countries to understand and comply with the laws. For various reasons, not all countries will be able to achieve this level of comprehensiveness in their beneficial ownership legislation.

Legislation from the remaining countries surveyed met many aspects of the EITI Standard on beneficial ownership, but not all of them. This legislation can be divided into two general categories—mining/oil and gas laws (Indonesia, Kazakhstan and Kyrgyz Republic) and company laws (Ghana, Peru, Ukraine and Zambia). Four of these countries were in the process of enacting legislation (Ghana) or drafting bylaws or implementing rules at the time the survey was conducted (Kyrgyz Republic, Kazakhstan and Ukraine). As implementing countries are making efforts to implement beneficial ownership transparency in the extractive sector, this is an opportune time for the EITI and its partners to support implementing countries with identifying gaps in their legislation and to advise them on developing their legislation/bylaws/implementing rules to fill the gaps.

Finally, the findings of the survey could be used by EITI implementing countries and stakeholders to inform discussions on beneficial ownership legislation and to share examples of what types of provisions and processes have been and can be used to address beneficial ownership disclosure consistent with the EITI Standard.