

Comments by the Investor Board Representative on the Draft EITI Rules (April 10th edition)

The Investors' position reflects the Board member's interventions at the Oslo meeting, while taking into account the April 10th edition of Draft EITI Rules and the latest Strategy Working Group discussions since then:

- **Licensing:** one of investors' key concerns relates to maintaining a "level playing field" for investee companies, and the concern that current wording may undermine intellectual property and investment. Thus, on licenses investors are agreed with their companies' constituency, as long as oil/gas and mining are themselves aligned. This is now the case.
- **Contractual Issues** – previous to the Oslo meeting, investors reached a consensus to "encourage" contract transparency. Nonetheless, they also stressed the important point above regarding the "level playing field". As such, investors now support the mining constituency's suggestions for a clearer delineation between exploration and exploitation licenses.
- **Beneficial ownership:** investors support proposed "encouragement" for countries to establish a register in which Ministers and senior officials involved in policy-making towards or the regulation of extractive industries or their close families or associates record any direct or indirect interests in entities that control either exploration or exploitation licenses.
- **Social Payments:** investors agree with the proposed clarifying amendments from the mining constituency relating to the voluntary disclosure of company discretionary social payments (whilst accepting the agreement in Oslo on social payments mandated by contracts with governments).
- **Reliability of data / Audit :** investors strongly support the objective of ensuring that EITI data is reliable and commands confidence. There are two points of concern, again relating to the point about the "level playing field" and additional costs: the first relates to the fact that companies that do not have audited accounts (local or state owned companies, for example)– and may thus be rated as higher 'risk' of delivering less reliable data - are treated more leniently than those that do; the second, as agreed in Oslo, that an Independent Administrator/MSG's power to require companies to produce an additional external audit letter (which may involve significant extra costs) should be constrained so that this is only done when necessary rather than treated as a routine option.
- **Disaggregation of data (notably project by project reporting):** investors naturally expect investee companies to strictly observe international and national law in the jurisdictions where they are operating. Nonetheless, investors also would like to avoid that investee companies be exposed to unnecessary audit costs and administrative complications. Therefore, investors strongly support disaggregated reporting down to the "project by project" level, as per the current consensus draft wording, i.e. "provided that it is consistent with accepted international standards".
- **Civil society participation:** investors are concerned about the effective capacity for civil society representatives to participate in EITI process. Investors are not necessarily convinced that it is always possible for civil society to compartmentalize or carve out a silo of activities strictly related to EITI and others, which might run afoul of governments. Therefore, investors support greater efforts for the Board to achieve a consensus for a more robust language in support of civil society protection.
- **Adapted implementation:** investors agree that there should be limitations on *when* such allowances can be granted. Requests should only be made during the sign-up phase or, for

current implementing countries, in advance of initiating the first reporting cycle under the new rules.