



ASSESSMENT OF THE PILOT PROJECT FOR BENEFICIAL OWNERSHIP LAW IN TAJIKISTAN

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1. Introduction

A total of 14 companies are taking part in a pilot project on beneficial ownership in the Republic of Tajikistan. The beneficial ownership declaration form for companies meets EITI standards.

2. Assessment of the completeness and quality of the disclosed information

Disclosure of beneficial owner was possible for companies, in which the government is a shareholder, thanks to the support of the Tajikistan Ministry of Finance and of the EITI Secretariat in Tajikistan.

Many companies with 100% international financing ignored requests from the Consultant to provide information on beneficial ownership. Due to the fact that time for the aggregation and accumulation of information was limited, the Consultant had some difficulty in providing detailed information.

3. Compliance of the approved definition of beneficial rights

Laws of Tajikistan do not contain provisions that require companies to disclose their founding documents and information about their beneficiaries. However, this information is not classified as confidential.

The concept of beneficial rights is mentioned in several laws and regulations in Tajikistan. The Law of the Republic of Tajikistan №524 "On Banking Activities" dated May 19, 2009 uses the term

“beneficiary” in the context of the "ultimate beneficiary of a majority interest", a natural person (in articles concerning the obtaining of licenses (Article 9), the creation of branches of foreign banks (Article 12), etc., for example:

"Article 9. Documents required to obtain a license

- Credit organizations are required, prior to their state registration and obtaining a license, to submit to the National Bank of Tajikistan an application, documents and the following information in the state language and to obtain a preliminary opinion from the National Bank of Tajikistan:

- a certificate stating the name, first name, middle name, nationality, place of residence, occupation or profession of the majority owner, including the final beneficiary of majority ownership, confirming their financial situation." However, this Law allows the final owner to be a legal entity:

"Article 26. The procedure for the acquisition of majority ownership

3. An application for the acquisition of a qualified ownership stake includes:

- a copy of the audited balance sheet and profit and loss account for the last year (in the event that the person applying to acquire a majority ownership stake, including the final beneficial owner of such a majority ownership stake, is a legal entity)."

- The Law of the Republic of Tajikistan №684 "On prevention of the legalization (laundering) of proceeds from crime and financing of terrorism", dated March 25, 2011

The Law gives the following definitions:

"- a beneficial owner is a natural person or several natural persons, who ultimately have the rights of ownership and effective control of a client and (or) a person on whose behalf a transaction is carried out; (Article 1)

- Organizations engaged in transactions with funds or other property must comply with the following due diligence procedures 2) identify and verify the identity of the beneficial owner (in Article 5)".

According to this Law, financial organizations and competent bodies have information about the final beneficiary, if the beneficiary is a natural person. However (Article 13), the competent body is obliged to "... ensure appropriate storage, protection and safe-keeping of information obtained in the normal course of its work that constitutes official, commercial, banking or other confidential information that is protected by law." So this information cannot be publicly available.

The Tajikistan MSG has defined a beneficial owner as a natural person or legal entity or several natural persons who ultimately have ownership and effective control of the client and (or) the person on whose behalf a transaction is carried out, having an ownership interest of 5% or more. If the beneficiary is a politically-exposed person, his interest is subject to mandatory disclosure, regardless of its level.

4. Data collection method

The data collection method is well suited to this form of reporting. However, the provision of training for members of the target companies in filling in the beneficial ownership declaration contributed to obtaining relevant information. Also, the practice of involvement of representatives of target companies in a meeting of the EITI Board contributes to an increase in confidence in EITI initiatives on the part of target companies in Tajikistan.

5. Difficulties

The main difficulties for the EITI in Tajikistan during the pilot project on beneficial ownership were as follows:

- a. Very limited time to carry out the pilot project. In addition to administrative and communication duties, the EITI Secretariat in Tajikistan had to explain the concept of beneficial ownership both to relevant state institutions and to companies specializing in the extractive industries in an extremely short time.
- b. There was also very little time for the collection of information from target companies, as they were occupied with their own business and did not always have time to respond promptly.
- c. Not all representatives of the target companies were present at the training on beneficial ownership. Therefore, the Consultant faced some difficulties in collecting information.
- d. Most respondents were mid-level staff at the pilot companies. Accordingly, there were some difficulties in gathering information in a timely way.

6. Recommendations

- i. Before EITI requirements on beneficial ownership are made mandatory for the Republic of Tajikistan, technical support needs to be provided to government by means of training,

the creation of an appropriate EITI regime and the formation of an institutional framework.

- ii. Transition to beneficial ownership law matching EITI standards should occur in several stages. Countries that are already implementing beneficial ownership should participate in the mapping of legislative provisions, which need to be adjusted and/or initiate new laws.
- iii. EITI in Tajikistan also recommends the creation of a unified register for companies specializing in the extractive industries. This register should be in the public domain, and technical support is required for its creation.
- iv. The International Secretariat should set up a working group in the transition phase to facilitate and support candidate countries in implementing beneficial ownership standards.
- v. Since very few companies in Tajikistan are aware of beneficial ownership principles and since very many cross-border projects are currently underway with the involvement of international companies from countries that do not implement beneficial ownership rules, EITI Tajikistan considers that Tajikistan needs at least two years to enshrine EITI standard in its laws.