

Disclosing beneficial ownership



EITI members are showing leadership on beneficial ownership disclosure.

Fredrik Reinfeldt, EITI Chair



The key to fighting corruption

Transparency around government revenues from the extractive sector is important for accountability, but says little about who owns and ultimately profits from the activities of the oil, gas and mining companies. Identifying the real owners – the ‘beneficial owners’ – of the companies operating in the extractive sector will help identify companies that are taking part in corrupt activities or tax evasion. This problem affects other sectors and often helps to fuel corruption and distrust.

‘Hidden ownership’ of companies is wide open to abuse: in early 2016, the leaked ‘Panama Papers’ exposed how corrupt public officials and tax evaders all over the world too often use anonymous legally registered companies to organise and hide money laundering, corruption and bribery. The cost to developing countries in lost revenue is estimated at a trillion dollars a year, and rising.

From outrage to solutions

With the adoption of the 2016 EITI Standard, EITI countries have agreed that all companies operating in, investing in or bidding for licences in their countries’ extractive sector must disclose their beneficial owners.

Beneficial ownership is a frontier issue in transparency and the EITI Standard’s requirements represent, for many countries, the first time this issue has featured on their national agendas. The beneficial ownership roadmaps that countries have been creating outline why countries are taking action on this issue and how they will get there. In so doing, these countries are linking the EITI’s requirements to their national and government’s priorities and objectives.

The EITI’s beneficial ownership requirement has also sparked a wider reform effort, as the roadmaps outline the legal, regulatory and administrative reforms each country considers necessary to achieve beneficial ownership transparency. Significantly, twenty of these roadmaps have followed the EITI’s recommendation that the information is made available through public registers. While other organisations and non-EITI countries are debating the pros and cons of public disclosure, these commitments put the EITI in the forefront of the global movement to tackle hidden ownership.

The beneficial ownership data collected and published will include the identity of the owner, such as their name, nationality and country of residence. In addition, any politically exposed persons holding ownership rights must be identified. Law enforcers and civil society will be able to access and scrutinize the information and take action to hold to account those who misuse anonymous companies.

Benefits from beneficial ownership transparency

- attracting quality foreign investment and creating a level playing field for all companies;
 - deterring corruption, tax evasion and money laundering;
 - reducing the risk of conflict of interest, preventing illicit financial flows, increasing state revenue and ensuring the integrity of publicly elected officials.
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We would like to know with whom we are entrusting the exploitation of our resources.

Didier Vincent Kokou Agbemadon, Togo
EITI, National Coordinator



It is great for business and responsible companies that EITI now requires beneficial ownership disclosure – it is important for us to know who we are doing business with.

Carine Smith Ihenacho, Chief Compliance
Officer at Statoil and EITI Board member



The Challenge

Oil, gas and mining projects can yield great profits both to extractive companies and governments. In many cases, such projects are run by responsible companies with the necessary technical and financial capacity. However, experience has unfortunately shown that, in many other cases, particularly where governance is weak, rights to extract oil and minerals are given to companies that do not have such competence. Such companies may be given access to lucrative extractive projects because their owners are politically connected or are willing to engage in questionable deals aimed at generating quick profits for a few rather than benefiting the wider society.

Suspicion of, or confirmed, wrongdoing by a company can lead to devaluation of other extractive assets and deter overall investment in countries rich in natural resources. Anonymous companies make it harder to curb money laundering and corruption, as their existence enables wrongdoers to hide behind a chain of companies, which are often registered in multiple jurisdictions.

It has been estimated that developing countries lose USD 1 trillion each year as a result of corrupt or illegal deals, many of which involve anonymous companies. In 2013, the Africa Progress Panel suggested that the Democratic Republic of Congo (DRC) in the period 2010-2012 lost at least USD 1.36 billion from five mining deals hidden behind a structure of complex and secret company ownership. According to DRC's EITI Reports, this is about the same as the country's average annual revenue from oil, gas and mining in the same time period. Disclosure of beneficial ownership will help lower the risk of such financial misconduct.

The Panama Papers confirm that persons behind oil, gas and mineral extraction may well hide behind shell companies. Attention being given to closing down the possibilities for hiding money in places like Panama is welcome, but it will not alone put an end to financial secrecy facilitating tax dodging and corruption. It has to be matched with better rules and enforcement in countries where the money is generated in the first place, which is why EITI's new ownership requirements are so important.

The rewards of beneficial ownership transparency are numerous. They include improvements in the investment climate, reduction of reputational and financial risks, prevention of corruption and illicit financial flows, improvement in the rule of law, growth in trust and accountability and enhanced revenue collection.

1 trillion dollars

are estimated to be lost each year as a result of corrupt or illegal deals

Beneficial ownership roadmaps

The majority of EITI countries have now mapped out how they will achieve beneficial ownership transparency.



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Defining beneficial ownership

The EITI Standard defines a beneficial owner in respect of a company as “the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity” (Requirement 2.5.f.i). The EITI Standard further notes that each multi-stakeholder group (MSG) should agree an appropriate definition of the term “beneficial owner” for their country.

In order to develop this definition, each EITI country’s roadmap includes activities such as exploring existing “international norms and relevant national laws” and agreeing on ownership materiality thresholds. This will lead to them finding an appropriate definition that can form the basis of reporting on beneficial ownership.

Company ownership or control takes many forms – through shares, voting rights or other means. For a country to identify who ‘calls the shots’ in terms of company decision-making and who ultimately benefits from the company’s activities, it is important to adopt a beneficial ownership definition that captures these various means of ownership and control.

Understanding how to define beneficial ownership and developing criteria for who can be considered a beneficial owner continue to be key topics of discussion among EITI member countries. These discussions have led to an emerging norm for what constitutes beneficial ownership.

The roadmaps from nine countries – Burkina Faso, Ghana, Kyrgyz Republic, Liberia, Mozambique, Niger, Senegal, Ukraine and UK – already outline beneficial ownership definitions that have been agreed by their MSGs or are currently in use. Other countries have not yet presented a definition, but have indicated that their roadmap sets out a path to reaching an agreed definition.

The criteria and hallmarks of a beneficial owner identified by EITI countries indicate that the person:

- Must always be a real, live person
- Cannot be a proxy or a nominee
- Can be an individual who does not necessarily have an ownership stake in the company, but benefits economically from the company’s activities through other agreements
- Can be an individual who controls the company through means other than formal ownership stakes or voting rights
- Can be an individual who holds a certain number of shares or voting rights in a company

EITI countries are making an important contribution to the discussion on who can be considered a beneficial owner and why. The definition from the Kyrgyz republic indicates that definitions can be very precise:

*A beneficial owner is an individual who controls a subsoil user and an applicant for the right to use subsoil resources by: direct and/or indirect ownership of 10 or more percent of shares or participatory units in charter capital; and/or direct and/or indirect ownership of 10 or more percent of the votes of the supreme governing body; and/or * direct and/or indirect appointment and / or dismissal of members of governing bodies.*

Source: draft amendments to the Subsoil Use Law

Ending company anonymity – the key to fighting corruption

Beneficial ownership transparency can help improve the investment climate, reduce reputational and financial risks, prevent corruption and illicit financial flows, improve the rule of law, increase trust and accountability and enhance revenue collection.

Natural resources

Oil, gas and mining projects can yield great profits both to extractive companies and governments. However, some extractive assets have been misallocated, putting people who live in resource-rich countries at risk of losing out. The use of anonymous companies exacerbates the effects of the resource curse, where countries with abundant oil, gas and mineral resources are economically poorer than countries with fewer of these resources.

Companies

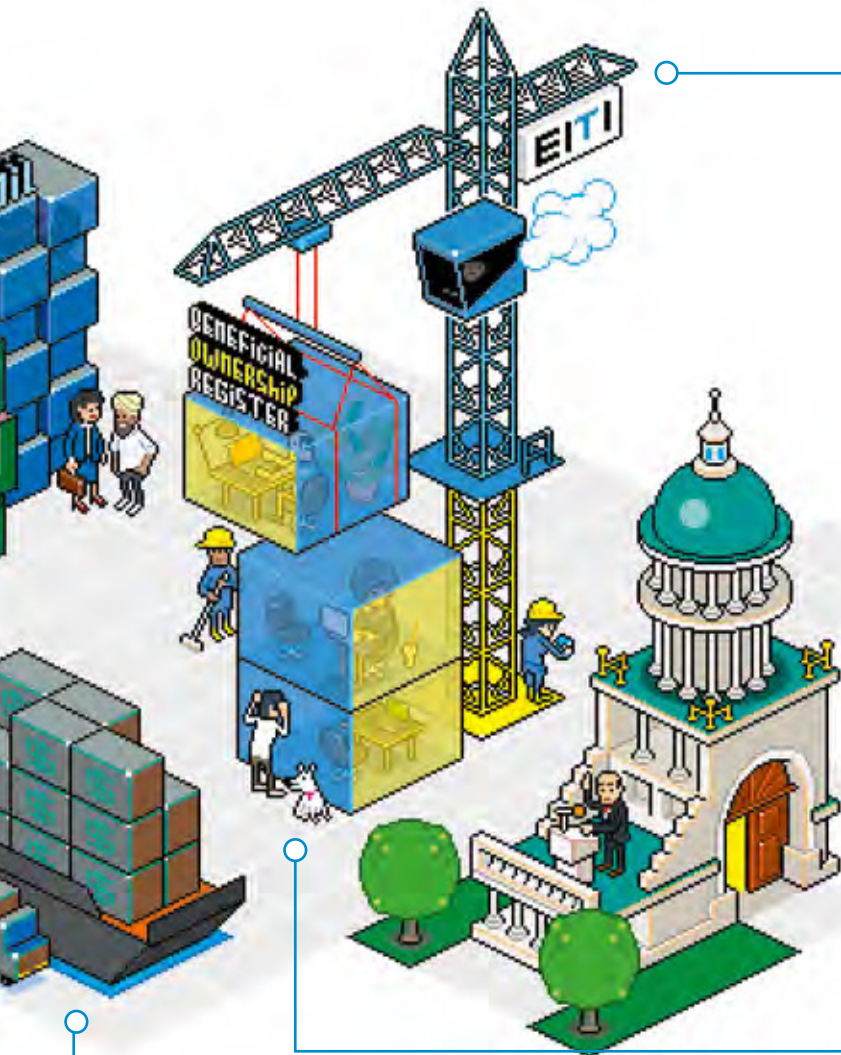
Millions of companies are established all over the world every year. But sometimes, the identity of the real owners – the ‘beneficial owners’ – of the companies that have obtained rights to extract oil, gas and minerals is unknown, hidden by a chain of unaccountable corporate entities. Anonymous companies make it harder to curb money laundering and corruption as it enables wrongdoers to hide behind a chain of companies often registered in multiple jurisdictions.

Anonymous ownership poses problems for other companies that don’t know who they are doing business with. Publishing the real owners will help ensure that there is a level playing field for all companies.

Public services

It has been estimated that developing countries lose USD 1 trillion each year as a result of corrupt or illegal deals, many of which involve anonymous companies. In 2013, the Africa Progress Panel suggested that the Democratic Republic of the Congo (DRC) in the period 2010–2012 lost at least USD 1.36 billion from five mining deals hidden behind a structure of complex and secret company ownership. This figure is equal to almost twice the DRC’s combined annual budget for health and education in 2012.





EITI

The Extractive Industries Transparency Initiative has made significant contributions to improving governance of the extractive sector at the national and global level. Debates on transparency in the sector are unrecognisable from ten years ago, and the EITI is seen as being at the forefront of many frontier debates including beneficial ownership, commodity trading, and artisanal and small-scale mining.

In February 2016, the 51 EITI members agreed new rules, requiring that all oil, gas and mining companies operating in their countries must disclose their beneficial owners from 2020. The government must also publish this data, ideally in beneficial ownership registries. The EITI is assisting countries to reform their legal and institutional set-ups in preparation.

Politically exposed persons

The 2016 EITI Standard requires Politically Exposed Persons to be transparent about their ownership in oil, gas and mining companies. This is because the owners of some companies might use their political connections to obtain favourable access to lucrative extractive projects. Publishing the identity of those who are given the rights to exploit resources helps prevent conflicts of interest.

Beneficial ownership register

20 EITI countries have decided to build public beneficial ownership registries. This is welcome and needs to be backed up by law enforcers, civil society and others who have a responsibility to scrutinize the information, and to take action to hold to account those who misuse anonymous companies. The EITI is assisting countries to establish beneficial ownership registries. Once complete, information on the corporate structures of companies and their parent companies or subsidiaries will make it easier for tax authorities to understand which transactions are liable to taxation.

Offshoring

The Panama Papers confirm that persons behind oil, gas and mineral extraction may well hide behind offshore shell companies. Attention on closing down the possibilities for hiding money in places like Panama is welcome. But this alone will not put an end to financial secrecy facilitating tax dodging and corruption. It has to be matched with better rules and enforcement in countries where the money is generated in the first place, which is why EITI's new ownership requirements are so important. Publishing beneficial ownership information can prevent illicit financial flows and reduce the risks of money laundering and corruption.



See how EITI countries are planning to disclose beneficial owners of oil, gas and mining companies:

www.eiti.org/beneficial-ownership

Assessing the legal and institutional set-up

As part of their roadmaps, EITI countries are carrying out reviews of their legal and institutional set ups to consider the changes necessary to meet the EITI requirements. They are also consulting relevant government agencies and bodies to see where capacity exists to collect and publish beneficial ownership data. The EITI International Secretariat is supporting the twenty countries that have decided to meet requirement 2.5.c, which recommends the establishment of public beneficial ownership registers.

Reforming the law

Although legislation is not essential, the vast majority of the roadmaps plan to enact beneficial ownership transparency through legislation. **Many countries, including Albania, Colombia, Côte d'Ivoire, Honduras, Kazakhstan, Mauritania, Mozambique, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Tanzania and Trinidad and Tobago, are planning to undertake legal reviews.** A number of other countries already specify in their roadmaps the laws and regulations that will require amendments and a timeframe for working on this. It seems that most countries plan to amend sector legislation, e.g. mining or petroleum laws, while some are planning to introduce beneficial ownership transparency through amendments to company laws or other dedicated legal instruments.

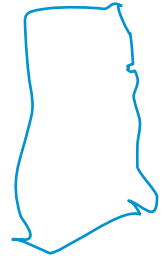
Administrative and regulatory reforms

Countries are also carrying out consultations with government agencies and other stakeholders in order to identify the agency(ies) that could be best suited to oversee, collate and maintain beneficial ownership information and to identify any existing public filing processes that could easily accommodate beneficial ownership disclosures.

The roadmaps from DRC, Ghana, Guinea, Kyrgyz Republic, Madagascar, Mali, Nigeria, Ukraine and the UK already specify the government institution that will be in charge of beneficial ownership transparency. In the DRC and Ukraine, since their Ministries of Justice take care of business registration, they will oversee implementation of the EITI's requirements on beneficial ownership. In Ghana, Nigeria and the UK, this function sits with the Registrar General, Corporate Affairs Commission and Companies House respectively. In Guinea, Kyrgyz Republic, Madagascar and Mali, it is envisaged that the government institutions in charge of the mining sector and cadastres will be responsible for enforcing the beneficial ownership requirements. Other roadmaps do not yet identify which government agency will be responsible for collecting and maintaining beneficial ownership data, but rather set out to achieve this through their roadmap and some roadmaps identify possible hosts that have not yet been confirmed.

Many countries are carrying out legal, regulatory and administrative reforms in tandem. This example from Ghana shows the many civil society organisations, government agencies and bodies being consulted by EITI Secretariats:

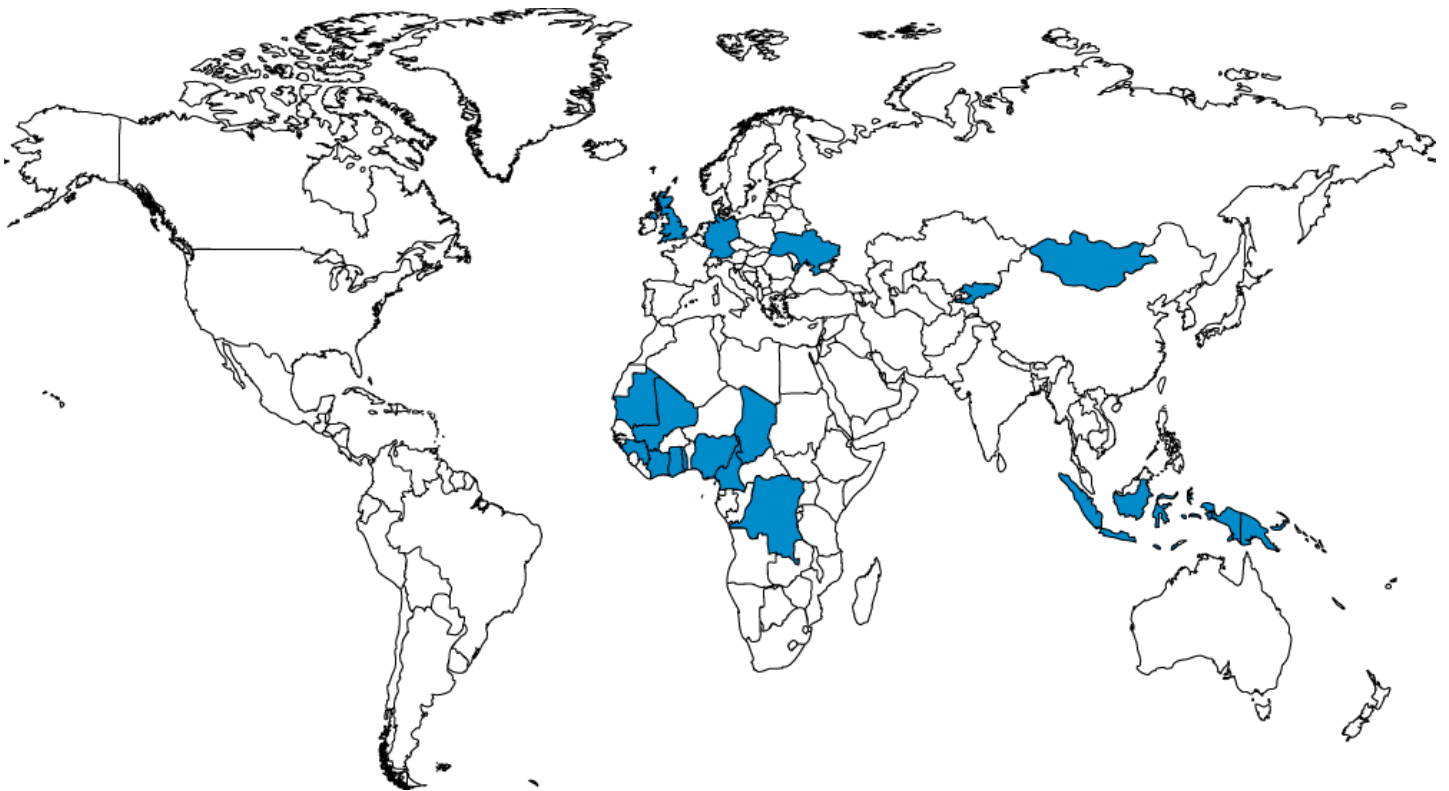
Case Study: Ghana



In Ghana, EITI has brought together relevant stakeholders to ensure that beneficial ownership disclosure is embedded in corporate law. Ghana EITI worked together with stakeholders to identify the necessary amendments to harmonise the law for beneficial ownership disclosure. This included engaging actors early on by holding national stakeholder consultations with civil society organisations and individuals working on open governance, financial integrity, private sector accountability, and extractive sector issues in the discussions. A consensus emerged that the scope of beneficial ownership disclosure should be expanded beyond extractives and apply to all companies registered in Ghana. The Companies' Act of 1963 was identified as the most appropriate legal instrument to establish a beneficial ownership regime. As the Act was under review for consideration by parliament, Ghana EITI proposed amendments to the act to ensure that provisions related to beneficial ownership would be included. The amendment was passed in August 2016, mandating the Registrar General to collect the information as well as maintain the beneficial ownership register. This is aimed to ensure public access to names and other details of companies' real owners.

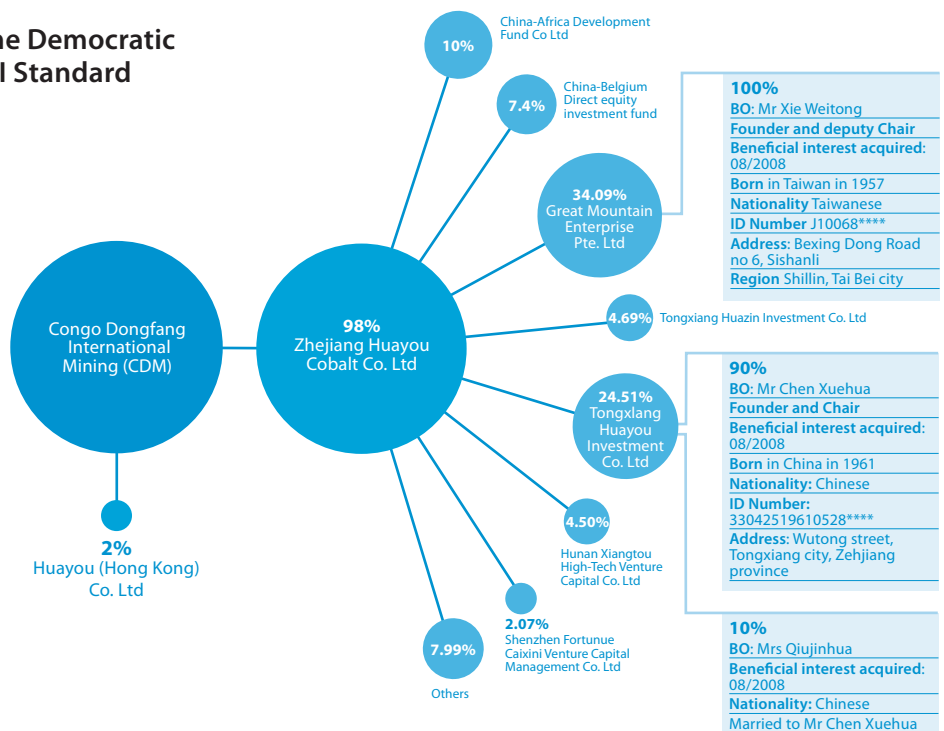
Establishing public beneficial ownership registers

Roadmaps from twenty countries specify that the beneficial ownership data will be made available through a public register. Several other roadmaps mention that the beneficial ownership data will be maintained by a register and that public accessibility will be considered alongside other opportunities for publicly disclosing the information.



Beneficial ownership disclosure in the Democratic Republic of the Congo under the EITI Standard

While beneficial ownership transparency may seem intangible, some countries are already publishing beneficial owners in their EITI Reports. This graphic maps an example of beneficial ownership disclosure by a mining company in the DRC, revealing the name, nationality, addresses and other details of the beneficial owners. The percentages indicate the shares owned by each company and at the top level by the ultimate beneficial owner.



Requirements of the 2016 EITI Standard



- a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.
- b) It is required that the EITI Report documents the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.
- c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.
- d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.
- e) The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. 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.
- f) Definition of beneficial ownership:
- i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
 - ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.
 - iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.
 - iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.
- e) The EITI Report should also disclose the legal owners and share of ownership of such companies.



Find out more:
eiti.org/beneficial-ownership