

Scoping Note for the Beneficial Ownership Pilot Project

Kyrgyzstan, 2014

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Abbreviations

EITI	Extractive Industries Transparency Initiative
MSG	Multi-Stakeholder Group
KR	Kyrgyz Republic
JSC	Joint-stock companies
LLC	Limited liability company

1. Introduction

The extractive industry plays an important role in the economy of Kyrgyzstan. Mining companies account for roughly half of all industrial production. According to the document *Information for the 2012 EITI Reconciliation Report of the Kyrgyzstan EITI Secretariat*:

Share of the extractive industry in the economy of Kyrgyzstan in 2012

GDP	7 %
Total industrial production	45 %
Total exports	44 %
Total tax and customs receipts	11 %

The importance of transparency and accountability in the extractive industries is apparent.

In June 2004 the Kyrgyz Republic announced that it was signing up to the Initiative. The EITI Principles were adopted under Resolution No. 361 of the KR Government dated 14 May 2004 “On Measures to Provide Greater Transparency in the Extractive Industries”.

In 2011, having successfully complied with all the EITI indicators, Kyrgyzstan underwent EITI validation (evaluation of implementation progress). On 2 March 2011, at the 5th EITI Global Conference in Paris, the EITI Board awarded Kyrgyzstan the status of EITI Compliant country. Kyrgyzstan also received an EITI Chair’s Award “for achieving significant progress in EITI implementation in difficult circumstances”.

In August 2012, the President of the Kyrgyz Republic, Almazbek Atambayev, signed a new version of the Law of the Kyrgyz Republic “On Subsoil” (the KR Subsoil Law). For the first time in the country’s history, the EITI is mentioned specifically in a separate clause. The KR Subsoil Law came into force on 17 September 2012.

Reflecting the importance of improving governance and accountability in the extractive industry and of compliance with the Kyrgyz Republic’s obligations under the EITI, the Initiative has been included in the National Sustainable Development Strategy of the Kyrgyz Republic for 2013-2017.

To date, nine EITI reports have been submitted, and EITI implementation is continually expanding (see the chart). As stated in the document *Information for the 2012 EITI Reconciliation Report*, “...while in the initial phase at first only 2, and then 6 companies in which the government had a stake were reported on, in 2012 the list of companies encompassed by the EITI had expanded to 73. The list of government bodies involved in EITI implementation had increased from 2 to 39, and the number of indicators used for company and government reporting had increased from 5 to 33 (taxes and payments)”.



Title: Number of indicators, companies and government bodies encompassed by the EITI
Key: blue = indicators; red = companies; green = government bodies

In light of the new EITI standards adopted in 2013 at the EITI Global Conference in Sydney, EITI reporting was expanded to include: production volumes, the allocation of revenues from extractive industries, the license register, transportation, and beneficial ownership.

2. Objectives of the Kyrgyz Republic's participation in the pilot project and study methodology

The 2013 EITI Standard (3.11) states, “It is recommended that implementing countries maintain a publicly available register of the beneficial owners of corporate entities”. The Standard defines beneficial ownership as follows:

“A “beneficial owner” in respect of a company is the natural person(s) who directly or indirectly owns or controls the corporate entity”.

Kyrgyzstan signed up for the pilot project, together with another 11 countries.

The importance of information about company owners is explained in the Terms of Reference for the pilot:

“Transparency about company and government payments is important for accountability, but tells citizens little about who owns extractive companies and ultimately benefits from the companies’ activities. In many cases, the identity of the real owners – the ‘beneficiaries’ – of the companies that have acquired rights to extract oil, gas and minerals is unknown, often hidden behind a chain of corporate entities. In many countries, corporate regulators collect details about the ownership of the companies that are incorporated in the country (incorporation registers) but these registries often only hold information on ‘shareholders’ and not the real beneficial owners. Most countries also maintain a separate registry of extractive license holders, but such registries often include only the name of the company

holding the license, and not its ultimate real beneficial owners. In other countries even less information on extractive company owners is available, particularly if foreign ownership is involved. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector.

... The EITI Board agreed at its meeting in Oslo in February 2013 that following a period of testing and learning, the EITI should, in the future, require disclosure of beneficial ownership in oil, gas and mining companies operating in implementing countries.... the Board also recognised that there was limited experience in addressing these issues in the context of the EITI, and that additional piloting and experimentation were needed.”

The basic purpose of the pilot project is to check what information about company beneficial ownership exists, to identify weaknesses, and to determine the necessary steps to facilitate greater transparency. This is intended to achieve disclosure through the EITI of extractive companies' beneficial owners and related information.

In Kyrgyzstan, key respondents, stakeholder representatives and experts have been interviewed (the list is attached), and EITI reports and publicly available data have been analysed. The preliminary report was discussed by the MSG on 29.06.14 and 12.07.14.

3. Beneficial ownership in the Kyrgyz Republic

A) Brief overview of key laws and provisions relating to beneficial ownership

Beneficial ownership is mentioned in the following laws and regulations of the KR:

- Law of the Kyrgyz Republic No. 135 dated 31.07.2006 “On Combating Financing of Terrorism and Money Laundering”:

Under this law, a “beneficial owner (beneficiary) is a person who has the title to funds or property”, and banks and financial organisations must provide “the information required to identify the natural person or legal entity on whose instructions and behalf a transaction is conducted, the taxpayer identification number (when there is one), and the place of residence or registered office of the natural person or legal entity”. However, [this information is to be provided] to an authorised body only. The management and employees of the authorised body, both the National Bank of the Kyrgyz Republic and other state bodies, including former managers and employees, “who, pursuant to this Law, have or have had access to data about persons providing information, shall be criminally and otherwise liable for illegal disclosure and use of commercial and other secrets.”

- Regulation on Identifying and Verifying Customers and Beneficial Owners (Beneficiaries) for the Purposes of Combating Financing of Terrorism and Money Laundering (approved by Resolution No. 135 of the Government of the Kyrgyz Republic dated 5 March 2010):

“Beneficial owner” (beneficiary) is understood to mean the same as in Article 2 of the Law of the Kyrgyz Republic “On Combating Financing of Terrorism and Money Laundering”.

This Regulation establishes the general requirements for implementation of the KR Law “On Combating Financing of Terrorism and Money Laundering”.

- **The Rules on State Registration of Immoveable Property Rights, Encumbrances and Transactions** (approved by Resolution No. 49 of the Government of the Kyrgyz Republic dated 15 February 2011): define beneficial ownership as “the right of one of the parties in a legal relationship to obtain a certain benefit from entering into a transaction under civil law or on the basis of a decision of an authorised body”.

- **Instructions on Working with Bank Accounts and Deposit Accounts** approved by Resolution No. 41/12 of the Board of the National Bank of the Kyrgyz Republic dated 31 October 2012:

The Instructions define a beneficial owner as “a person who has the title to funds or property”.

When opening an account (clause 25) a bank must establish “whether the customer is acting in their own interests or in the interests of a beneficial owner (beneficiary). If the customer is acting in the interests of a beneficial owner (beneficiary), the bank must **identify** the beneficial owner (beneficiary) in the manner stipulated by the legislation of the Kyrgyz Republic. The bank must **request from the customer information about the beneficial owner**¹ (beneficiary) in accordance with the requirements stipulated in the legislation of the Kyrgyz Republic.

The documents submitted to show that the customer is authorised to manage the funds and act in the interests of the beneficial owner (beneficiary) may include a “certificate of shareholding on behalf of a beneficial owner (beneficiary)”. The bank may also require the customer to provide additional documents and information necessary to identify the beneficial owner. The bank can refuse to open the account until these documents have been provided.

The bank has the right to terminate unilaterally a bank account or bank deposit agreement if “...the customer has not submitted the necessary documents to comply with the requirements on identifying and verifying customers and establishing who the beneficial owners (beneficiaries) are” (clause 53).

Also, the bank must “refrain from opening an account for a legal person or natural person or from conducting transactions on their account if the bank has information, obtained in accordance with the legislation of the Kyrgyz Republic, that the customer and/or beneficial owner (beneficiary) is involved in terrorist (extremist) activities and/or money laundering” (clause 22).

In addition, according to Appendix 1 to the Instructions, banks are to follow a “Know Your Customer” policy. This determines the procedures for conducting proper checks of customers and includes a procedure for identifying the customer and establishing who the beneficial owner (beneficiary) is when opening a bank account or deposit account. Moreover, information “about the customer and beneficial owner (beneficiary) obtained as a result of identification is to be recorded in the questionnaires (files) for the customer and beneficial owner (beneficiary), compiled in accordance with the requirements of the authorised government body for combating the financing of terrorism and money laundering. The customer identification procedure anticipates that the **identity** of the customer will be established.

¹ Here and hereinafter the bold highlighting has been added by T. Sedova.

With regard to legal entities, when identifying the beneficial owner (beneficiary), “special attention must be paid to shareholders, persons with signing authority, or other persons who have a **significant equity stake** or who exercise **control** over the customer by some other means. If the owner is another legal entity, the bank must identify the owners or the persons exercising control over this particular legal entity”.

Therefore, banks will undoubtedly possess information about the beneficial owner of a given legal entity, including their identity. However, under the Law of the Kyrgyz Republic “On Bank Secrecy”², the following are considered to be bank secrets: “information about the accounts (deposits) of a customer (correspondent) that became known to the bank due to its providing services to the customer; information about transactions carried out on the instructions or in favour of the customer, and also **information about the customer**”. Information is also held by the appropriate authorised bodies, but this information cannot be made publicly available.

During the mission for this pilot project, on 24 May 2014, the President of the Kyrgyz Republic, Almazbek Atambayev, signed the KR Law “**On Amending the KR Law “On Subsoil” No. 77**”:

Articles 4 and 35 refer to the EITI. The following paragraph has been added to Article 4:

“The Extractive Industries Transparency Initiative (EITI) is a global international standard promoting the transparency of revenues from the extractive sector. It provides for the reconciliation of company payments and the revenues being received by the Government of the Kyrgyz Republic and for the regular provision of information to the public at large.”

Article 35, clause 5 states:

*“Subsoil users are **entitled**, within the framework of the Extractive Industries Transparency Initiative (hereinafter, the EITI), to submit on an annual basis, before the end of the first quarter of the year following the accounting year, to the authorised government body for implementation of state policy on subsoil use, reports on all taxes and payments made by subsoil users on a cash basis. The procedure for submitting reports under the EITI, the forms of reporting and the indicators shall be governed by the laws and regulations of the Government of the Kyrgyz Republic.”*

Therefore, at present, EITI reporting remains voluntary for companies (“entitled” does not mean “obliged”).

The revised law contains clear references to the concepts “company owner”, “ultimate owner” and “beneficiary” in Article 27, part 3, clause 6, and Article 30, part 6, clause 10:

Article 27, Part 3: Grounds for terminating the rights of subsoil users

(6) evidence that when obtaining a license to use mineral resources a subsoil user submitted unreliable information **about the ultimate owners of the company** or about financial means.”

² In the version of the KR Laws dated 17 October 2008 No. 216, 17 October 2008 No. 231, 19 May 2009 No. 160, Art. 4

Article 30 Procedure for issuing licenses to use mineral resources: add the following clauses 8, 9 and 10 to part 6 (... are to be attached to the application for a license):

(10) information and documents disclosing the natural persons who are the ultimate owners and beneficiaries of the legal entity applying for the license”.

This concerns not only new licenses, but also previously issued licenses, as they have to be re-issued (pursuant to Art.53: “In Article 53: word part 1 as follows:

(1) Licenses to use mineral resources issued before the entry into force of this Law are to be re-issued as licenses to use mineral resources under this Law, before 31 December 2014.

(5) When subsoil users have failed to notify the authorised government body for implementation of policy on subsoil use of a **change in the company owners** that occurred before the entry into force of this Law such notification must be provided not later than 31 July 2014.”

Therefore, according to the latest amendments to the KR Subsoil Law, for the issuance (and reissuance) of licenses it is essential to submit information disclosing the natural person who is the beneficial owner, and the provision of unreliable information is one of the grounds for terminating rights to use mineral resources.

For the purposes of our pilot project in particular, and in general for information disclosure about the owners of companies that are subsoil users, it would suffice to make this information publicly available in the database of licenses maintained by the KR State Agency for Geology and Mineral Resources.

It is important to note that all types of subsoil use with respect to all types of mineral resources are subject to licensing, including fresh, thermal and mineral groundwater, the exceptions being: when rights to use mineral resources are granted under a concession agreement or a production sharing agreement (PSA), and also when work is carried out on the basis of state registration. The procedure for granting rights to use mineral resources on the basis of a concession agreement or a PSA is specified in the Law of the Kyrgyz Republic “On Concessions and Concessionaires in the Republic of Kyrgyzstan” and the Law of the Kyrgyz Republic “On Production Sharing Agreements for Subsoil Use”. Under Article 11, clause 3 of the KR Law “On Production Sharing Agreements for Subsoil Use”, “Representatives of the Government of the Republic of Kyrgyzstan or of an authorised government body are not entitled to disclose information that is classed by the Agreement as confidential or that is a commercial secret of a Concessionaire”. Moreover, under the law, the principle of legislative stabilisation applies to PSA (Art.19). If the other party to a PSA is a foreign legal entity or natural person, the agreement is ratified by the Jogorku Kenesh (parliament) of the Kyrgyz Republic. Once the agreement has been signed the investor is also issued with a license in accordance with the procedure specified by the legislation of the Kyrgyz Republic.

Therefore, if a party to a PSA considers information about beneficial owners to be confidential, given the principle of legislative stabilisation, the data might not be disclosed. However, as they are subsequently issued with a license there is an opportunity for information disclosure, provided that the subsoil user does not specifically refuse this.

B) Brief review of existing company registers

Provision 3.9(b) of the 2013 EITI Standard states, “It is expected that the license register or cadastre includes information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report”.

The total number of current licenses at the end of 2012 was 958, which was 108 more than at the end of 2011 (see the chart).



Chart title: Number of valid licenses

The table below provides a breakdown of the licenses in the Kyrgyz Republic by subsoil resource.

Number of current licenses to use mineral resources as at 31 December 2012

Type of subsoil use	Gold	Ores	Coal	Oil	Non-metallic minerals	Groundwater	Total
Exploitation	48	18	110	19	304	131	630
Exploration	42	13	38	4	97		194
Prospecting	71	21	1	30		11	134
Total	161	52	149	53	401	142	958

The database of licensees is available on the website of the State Agency for Geology and Mineral Resources of the Government of the KR – www.geology.kg (Licensing and a list of licensees:

http://www.geology.kg/index.php?option=com_content&view=category&id=124&Itemid=340&lang=ru)

³ Information for the 2012 EITI Reconciliation Report (Kyrgyzstan EITI Secretariat)

The database contains the following information:

- License number, date issued, period of validity
- Name of site
- Subsoil user
- Location of the site: district, region
- Type of mineral
- Type of subsoil use (E- Exploitation, P- Exploration, П- Prospecting)
- Size of site, hectares
- Address, telephone, fax and full name of the person in charge

At 24.04.2014 the database contained information about 1,160 general licenses, of which 176 were for gold, 72 for metals, 207 for coal, 446 for non-metallic minerals, 55 for oil and gas, 202 for water, and 2 for general work.

Therefore, for the purposes of the pilot project, this information (specifically, the subsoil user's name) may be useful as a starting point since legal entities are listed as subsoil users.

Information about legal entities is contained in the Electronic Database of Legal Entities, Branches and Representative Offices on the website of the KR Ministry of Justice www.minjust.gov.kg. Registration documents can be accessed by providing a name or registration number, taxpayer identification number, or OKPO code. See, for example, the entry for FONTA LLC (<https://register.minjust.gov.kg/register/Public.seam?publicId=4895>).

Ministry of Justice of the Kyrgyz Republic

I. Name and form of incorporation of the legal entity or branch (representative office)

1. Full name (in the state language)	"FONTA" Firmasy joopkerchiligi chektelgen koomu
2. Full name (in the official language)	Limited liability company FONTA
3. Abbreviated name (in the state language)	" FONTA" Firmasy JChK
4. Abbreviated name (in the official language)	LLC FONTA
5. Form of incorporation	Limited liability company

II. Information about foreign participation

6. Is there any foreign participation?	No
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III. Registration number, OKPO code, taxpayer identification number

7. Registration number	4895-3301-000
8. OKPO code	20899037

9. Taxpayer identification number 02909199510077

IV. Address (registered office) of the legal entity, branch

10. Region BISHKEK

11. District PERVOMAISKY DISTRICT

12. City/town/village PERVOMAISKY DISTRICT

13. Estate

14. Street (avenue, boulevard, lane etc.) Togolok Moldo Street

15. Building No. 17b

16. Flat No. (office, room etc)

V. Contact details for the legal entity, branch (representative office)

17. Telephone 210004

18. Fax

19. Email address

VI. Information about state (accounting) registration (re-registration) of the legal entity, branch (representative office)

20. State (accounting) registration or re-registration Re-registration

21. Date of order 26.03.2012

22. Date first registered (if re-registered)

VII. Information about means by which the legal entity was founded

23. Means of founding

VIII. Information about the form of ownership

24. Form of ownership Private

IX. Information about the manager (the most senior manager, if collegial)

25. Surname, first name, patronymic	Boltabayev Shukhrat Kudratillaevich
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X. Information about the legal entity's main type of activity

26. Main type of activity	Extraction and enrichment of non-ferrous metal ores not included in another category
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07.29.9

27. Economic activity code

XI. Information about founders (members)

28. Number of founders (members) – natural persons	1
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29. Number of founders (members) - legal entities	1
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30. Total number of founders (members)	2
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31. Founders (members):

Founder (member)	Boltabayev Shukhrat Kudratillaevich
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Founder (member)	SINATEKHNIKS PLUS LLC
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Therefore, the information that can be obtained includes: information about state registration, form of ownership, foreign participation, and also information about the founders (both legal entities and natural persons), which in a number of cases could also be the beneficial owners.

C) Definition of “beneficial ownership”

The 2013 EITI Standard (3.11) gives the following definition of beneficial ownership: “A “beneficial owner” in respect of a company is the natural person(s) who directly or indirectly owns or controls the corporate entity”.

Local legislation (as described in 3A above) provides the following definitions of “beneficial owner”: a “beneficial owner” (beneficiary) is a person who has the title to funds or property”, “it is a person on whose behalf and/or at whose expense a customer conducts transactions with funds or property, or that, pursuant to an agreement between this person and the customer, can directly or indirectly influence the customer’s transactions with funds or property, or a person in whose favour transactions with funds or property are ultimately conducted.” It is also “the right of one of the parties in a legal relationship to obtain a certain benefit from entering into a transaction under civil law”.

Therefore, a **beneficial owner** is a natural person who has the title to property, influences transactions, and obtains a certain benefit from transactions.

Under the proposed Fourth EU Directive on the prevention of money laundering a **threshold** of 25% plus one share would be evidence of ownership or control through shareholding and apply to every level of direct and indirect ownership.

With respect to the granting of licenses to use mineral resources, Article 37, clause 6 of the Subsoil Law states that “If there is a change of 10% or more in the share of ownership when members change, a bonus is payable in accordance with the tax legislation of the Kyrgyz Republic, with the exception of publicly listed companies”. The MSG has discussed what percentage of ownership should be the threshold for the purposes of the project. In line with the Subsoil Law, the threshold was initially set at 10%. However, the MSG subsequently concluded that beneficial owners with a **5%** ownership stake must be disclosed (consistent with Global Witness’s recommendations).

We turn now to discuss inclusion of the concept of **politically exposed persons (PEP)**. The Law of the Kyrgyz Republic No. 135 dated 31.07.2006 “On Combating Financing of Terrorism and Money Laundering” gives the following definition:

“Foreign politically exposed persons are citizens of foreign states who were entrusted with or are currently entrusted with prominent state and political functions in a foreign country (heads of state or of government, senior political figures, senior officials in the government, the courts, the military, law enforcement and fiscal authorities, and heads and public figures of political parties and religious associations), including former such persons.”

It would be advisable to apply this definition to local PEP also, i.e. to people who were entrusted with or are currently entrusted with prominent state and political functions in Kyrgyzstan (heads of state or of government, senior political figures, senior officials in the government, the courts, the military, law enforcement and fiscal authorities, and heads and public figures of political parties and religious associations), including former such persons.

Therefore, for the purposes of the pilot project the following definition of beneficial owner is proposed:

Beneficial owner - a natural person who has the title to property, influences transactions, obtains a certain benefit from transactions, and who has an ownership stake of at least 5%. If the beneficial owner is a politically exposed person their stake must be disclosed irrespective of the size of the stake.

4. Suggested methodology and timetable for collecting beneficial ownership information

The study has shown that according to the latest amendments to the KR Subsoil Law, for the issuance (and re-issuance) of licenses the applicant must submit information disclosing the natural person who is the beneficial owner or the persons who are the ultimate owners and beneficiaries of the legal entity applying for the license.

As described above, a database of licensees is available on the website of the State Agency for Geology and Mineral Resources of the KR – www.geology.kg. At present, it contains the following information: license number, date issued, period of validity; name of the site and the subsoil user; location of the site: the type of mineral and the type of subsoil use; the size of the site, and also the address, telephone, fax and full name of the person in charge.

There are no legislative provisions in Kyrgyzstan that would oblige companies to publicly disclose their founding documents and information about their beneficial owners. At the same time, there are no provisions preventing such disclosure. **The MSG and the EITI Secretariat should make every effort to get information about beneficial owners added to the publicly available database of licensees.** Licenses should be re-registered by 31.12.14. Therefore, should this information be disclosed on the site, it would be pertinent to the 2014 report.

Until this issue has been discussed and decided, for the purposes of the pilot project (2013 report) the database of licensees may be useful as a starting point since legal entities are listed as subsoil users.

Next steps for disclosure of beneficial ownership information in the 2013 EITI Report:

Step 1 – Review the full list of licensed subsoil users (legal entities). (Licensing and a list of licensees available from: http://www.geology.kg/index.php?option=com_content&view=category&id=124&Itemid=340&lang=ru). It seems much more realistic that reports on beneficial ownership will be submitted by companies that are reporting under the EITI (see Appendix A).

Step 2 – The MSG was initially of the view that for the purposes of this project, companies with licenses for common minerals should be excluded from the list of license holders reporting under the EITI. This is because they are likely to be SMEs, their payments into the budget will be insignificant, the amount of foreign investment is minimal, and the disclosure of their owners is not a matter of particular public interest, while at the same time for them such a disclosure could amount to a threat of additional investigations and sanctions, including by criminal organisations.

Special note should be taken of extractive companies' reactions. Some companies have expressed serious concerns about information being disclosed under the pilot project. There are concerns about an increase in the number of checks by authorised authorities and additional sanctions. There are also concerns that if information about individual company owners is made public, including their contact details, they could be targeted by criminal organisations.

However, the MSG subsequently reconsidered its position and decided that the pilot project on beneficial ownership should include all 73 companies reporting under the EITI, including [those with licenses for] common minerals and coal.

At present the list does not contain any companies that are in the exploration phase. **The MSG recommends examining whether companies that are in the exploration phase could be included in EITI reporting, and, accordingly, in beneficial ownership reporting, for the 2014 EITI Report at the very least.**

Step 3 - Given that public companies and their wholly owned subsidiaries are not obliged to disclose their beneficial owners (EITI Standard 2013 (3.11.d.iii)), identification of such companies from open sources (the websites of Bloomberg and stock markets) and their exclusion from the list.

On the Bloomberg website, for example, it is possible to find information on trading companies in different sectors of the economy (metals, electricity etc.) and then to follow a link to a list of companies, e.g. gold-mining, which shows which stock exchange a company trades on (<http://www.bloomberg.com/markets/companies/gold-mining/>).

Step 4 - For the remaining companies, a search for founding documents in the Electronic Database of Legal Entities, Branches and Representative Offices on the website of the KR Ministry of Justice www.minjust.gov.kg. By providing a name or registration number, taxpayer identification number, or OKPO code, registration documents can be accessed and founders identified (natural persons and legal entities).

Step 5 – If a different legal entity is specified in the founding documents, steps 3 - 4 should be repeated. If nothing further can be established (and no information is found via public search engines, or it is an offshore company), a beneficial ownership declaration form should be sent to the company (Appendix B).

For the 2013 EITI report, it is recommended that the task of collecting information about companies' beneficial owners in accordance with this definition and proposed methodology be included in the TOR for the reconciliation company that will collect information and include data in the overall EITI Report.

The timetable will be in line with the overall timescale for reporting. Provisionally, it will take 20 working days (step 3 - five days, step 4 - five days, step 5 - five days, analysis and producing the report - five days).

Two options are proposed for disclosure of beneficial ownership for the 2014 EITI Report:

1) The MSG and the EITI Secretariat endeavour to get the State Agency for Geology and Mineral Resources of the KR Government to include information about beneficial owners in the publicly accessible database of licensees on the website (on the basis of the KR Law "On Amending the KR Subsoil Law")

If this data will not be included:

2) A beneficial ownership declaration form must be included in the general EITI report form for 2014 to be agreed by the MSG and approved by the government. In that case companies would be obliged to complete the form and provide information about beneficial owners.

Risks. Companies with some degree of foreign ownership, in particular by countries not participating in the EITI, may refuse to complete the forms and the possibility of persuading them is minimal given that they are located in another jurisdiction. The same applies to legal entities registered offshore. Where there has been a refusal to provide information about beneficial owners this must be highlighted in the report.

Appendix A: List of extractive companies

List of extractive companies whose accounts and the corresponding data held by government bodies are subject to reconciliation by an independent auditor under the Extractive Industries Transparency Initiative (EITI)

73 companies in total

No.	Company	Deposit, district, region	Type of mineral
Gold			
1	CJSC "Kumtor Gold Company"	Kumtor deposit, Jeti-Oguz district, Issyk-Kul region	gold
2	OJSC "Kyrgyzalty"	Makmal deposit, Jalal-Abad region, Toguz-Toro district, Tereksai deposit, Jalal-Abad region, Chatkal district, Solton-Sary deposit, Naryn district, Naryn region	gold
3	"Vertex Gold Company" LLC	Lode N° 2 of Jamgyr deposit, Chatkal district, Jalal-Abad region	gold
4	"Alтынкен" LLC	Taldybulak deposit, Levoberezhnyi, Kemin district, Chui region	gold
5	"Andash Mining Company" LLC	Andash deposit, Talas district, Talas region	gold and copper
6	"Kazakhmys Gold Kyrgyzstan" LLC	Bozymchak deposit, Ala-Buka district, Jalal-Abad region	gold, copper, silver and molybdenum
7	"Full Gold Mining" LLC	Upper part of Ishtamberdy deposit, Ala-Buka district, Jalal-Abad region	gold
8	CJSC "Kichi-Chaarat"	Kuru-Tegerek deposit, Chatkal district, Jalal-Abad region	gold, copper and silver
9	"Fonta" LLC	Sulu-Tegerek and Kuru-Tegerek deposits, Chatkal district, Jalal-Abad region	gold
10	"Eventys" LLC	Karatyube-Buzuk deposit, Chatkal and Ala-Buka districts, Jalal-Abad region	alluvial gold
11	"Dolina Kasana" LLC	Baimak deposit, Ala-Buka district, Jalal-Abad region	alluvial gold
12	"Elko-Service" LLC	Upper Kara-Bulak deposit, Panfilov district	
13	Interbusiness LLC	Levoberezhnyi Kara-Kazyk deposit, Chon-Alai district, Osh region	
14	"Kaidi" LLC	Levoberezhnyi Kara-Kazyk area, ore body N° 2 of Kara-Kazyk deposit, Chon-Alai district, Osh region, Nasonovskoye deposit, Panfilov district, Chui region	gold, silver and copper
15	CJSC "Chaarat Zaav"	Tulkubash area of Chaarat deposit, Chatkal district, Jalal-Abad region	gold
16	"Highland Exploration" LLC	Unkurtash deposit, Karatyube deposit, Ala-Buka district, Jalal-Abad region	gold, silver
17	"Kalton" LLC	Karakorum area, Jartysu area, Chatkal district, Jalal-Abad region	alluvial gold
18	"Kasansai-Ata" LLC	Nizhniy Buzuk area of Nizhnebuzuk deposit, Chatkal district, Jalal-Abad region	alluvial gold

No.	Company	Deposit, district, region	Type of mineral
19	"Chatkal-17" LLC	Zeksay area of Verkhnekasan deposit, Nizhniy Ishtamberdy area of Verkhnekasan deposit, Kara-Terek area of Verkhnekasan deposit, Kok-Kyia area of Verkhnekasan deposit, Chalkyidy area of Verkhnekasan deposit, Ala-Buka district, Jalal-Abad region	alluvial gold
20	"GMK Alliance" LLC	Andagul deposit, Saraisai, Ala-Buka district, Jalal-Abad region	alluvial gold
21	"JENNAZTEM" LLC	Kyndy area, At-Bashy district, Naryn region	alluvial gold
22	"Kai Enterprise" LLC	Chanach Nizhniy area of Chanach deposit, Chatkal district, Jalal-Abad region	alluvial gold
Metals			
1	OJSC "Khaidarkan Mercury JSC"	Khaidarkan deposit, Kadamjai district, Batken region	mercury
2	OJSC "Kadamjai Antimony Plant"	Kadamjai district, Batken region	ore processing
3	"Saryjaz Mineral Mining Company" LLC	Lesistyi area, tin tungsten Trudovoye deposit Kensu, Tashkoro area of tin tungsten Trudovoye deposit, Ak-Suu district, Issyk-Kul region	tin, tungsten
4	"Central Asian Tin Company" LLC	Central area of Trudovoye deposit, Ak-Suu district, Issyk-Kul region, Uchkoshkon deposit, Jeti-Oguz district, Issyk-Kul region	tin, tungsten
5	OJSC "Kutesay Mining"	Kutesay II deposit, Kalesai, Kemin district, Chui region	REM, bismuth, molybdenum and silver
6	"Mineral Trade" LLC	Ikichat deposit, Ak-Suu district, Issyk-Kul region	lead
7	AK "Merit More Investments Ltd"	Sugut deposit, Batken district, Batken region	nepheline-syenite (Al)
8	"Sparkler Mining Inc" LLC	Zardelek deposit, Batken district, Batken region	nepheline-syenite (Al)
Oil and gas			
1	JSC "Kyrgyzneftegaz"	Beshkent-Togap-Tashrvat deposit, North Karakchikum, Tamchi, Karagachi, Leylek district, Batken region, Mailuu-Suu, Mailuu-Suu-IV - East Izbaskent, Izbaskent, Mailuu-Suu III, Nooken district, Jalal-Abad region, Changyr-Tash, Chigirchik, Suzakskoe, Suzak district, Jalal-Abad region	oil
2	OJSC "Batkenneftegaz"	Sarykamysh-Sarytok deposit, North and South Rishtan, Chaur-Yarkutan, Kadamjai district, Batken region	oil and gas
3	"South Derrik" LLC	Mailuu-Suu III deposit, Nooken district, Jalal-Abad region	oil and gas

No.	Company	Deposit, district, region	Type of mineral
4	CJSC "Textonic"	Central and eastern areas, Mailuu-Suu-II deposit, Nooken district, Jalal-Abad region, Charvak area, Changyrtash deposit, Suzak district, Jalal-Abad region	oil and gas
5	CJSC GlavNefteGaz	Chongara-Galcha deposit, Northern Sokh, Kadamjai district and Batken district, Batken region	oil and gas
Coal			
1	JSC "Ak-Jol"	Lokalnyi area of western part of Kara-Keche, Jumgal district, Naryn region	coal
2	CJSC "Sharbon"	Pravoberezhnyi Tokson-Teke area of Kara-Keche deposit, Jumgal district, Naryn region	coal
3	"Razrez Busurmankul-T" LLC	Min-Kush-Zapad area, Min-Kush deposit, Jumgal district, Naryn region	coal
4	OJSC "Shakhta Jyrgalan"	Jyrgalan deposit, Ak-Suu district, Issyk-Kul region	coal
5	SJSC "Kyzyl-Kyia-Komur"	Abshir, 1st row area, Nookat district, Batken region	coal
6	SJSC "Sulyukta Komur"	Parcha-Too area of field 12, "Shakhta Chygys" area, field No. 12, "Shakhta Tabyshker" area, Sulyukta deposit, Leilek district, Batken region	coal
7	SE "Kara-Keche" under Ministry of Energy of KR	Central area of Kara-Keche deposit, Jumgal district, Naryn region.	brown coal
8	"Parity Coal" LLC	"Yuzhnoye" area Kyzyl-Bulak deposit, Alai district, Osh region	coal
9	"Pand-Sher" LLC	Akkul area of Kok-Moinok deposit, Kak area, eastern area of Kok-Moinok deposit, Jumgal district, Naryn region	coal
10	OJSC "Jumgal Suu Kurulush"	Site No. 1 of western area, Min-Kush deposit, Jumgal district, Naryn region	coal
11	CJSC "Bereket"	North-east flank of Turakavak area of Min-Kush deposit, Jumgal district, Naryn region	coal
12	"AGK Too Invest" LLC	South-west area of Kok-Moinok deposit, Jumgal district, Naryn region	coal
13	"Tegene" LLC	Tegenek-Karyernyi eastern area, Aksy district, Jalal-Abad region	coal
14	"Ak-Bulak Komur" LLC	Sulyukta deposit, north-west area "Kokinesay" deposit, Leilek district, Batken region	coal
15	"T. Maripov" LLC	Sulyukta deposit, eastern part field No. 12, Leilek district, Batken region	coal
16	"T. Ibraimov" LLC	"Kokine-Say" area, Sulyukta brown coal deposit, Leilek district, Batken region	coal

17	"Kyzyl-Bulak" LLC	Eastern Kyzyl-Bulak area, Sulyukta brown coal deposit, Leilek district, Batken region	coal
18	OJSC "Sulyukta Shakhta kurulush"	Sulyukta deposit, lokalnyi area, field No. 8/11, Leilek district, Batken region	brown coal

No.	Company	Deposit, district, region	Type of mineral
19	"Nur" LLC	Bremsbergobyi area, mine field No. 12 of Sulyukta deposit, Leilek district, Batken region	coal
20	"Sulyukta Kara-Bulak" LLC	Eastern Kokine-Say-2 area, Sulyukta deposit, Leilek district, Batken region	coal
21	"Shakhta Besh-Burkhan A. Masaliev" LLC	"Sputnik" seam of Besh-Burkhan deposit, Nookat district, Osh region	coal
22	"Shakhta Tulek" LLC	Kok-Jangak deposit, mountain 1250+1330+1600, Suzak district, Jalal-Abad region	coal
23	"Nark-Too" LLC	Min-Kush deposit, eastern part of Yuzhnaya mulda, Jungal district, Naryn region	brown coal
24	"Uzgen Energo ugol" LLC	Kara-Tyube deposit, Muz-Bulak area, Western Muz-Bulak area, Kara-Dobo deposit, Uzgen district, Osh region	coal
Construction materials			
1	"Bishkekstroyaterialy" JSC	Bash-Kara-Suu area of Orok deposit, Alamudun district, Chui region	loam
2	OJSC "Kum-Shagyl"	Alamudun deposit, Alamudun district, Chui region	sand and gravel
3	JSC "Silikat"	Ivanovskoye (sand), Issyk-Ata district, Chui region	sand
4	JSC "Igilik"	North-east area of Shirokoye deposit, Moskovskiy district, Chui region	loam
5	"Southern Construction Materials Plant" LLC	Kattasay deposit, Aravan district, Osh region	
6	OJSC "Kyrgyz Too-Tash"	Kaindinskoye (granodiorites), Manas district, Talas region, Tokmok (Shamsinskoye) (sand and gravel), Chui district, Chui region	granodiorites
7	OJSC "ZhBI Plant"	Vasilyevskoye deposit, Alamudun district, Chui region	sand and gravel
8	JSC "Nur-KM"	Kyzyl-Kiya deposit, Kadamjai district, Batken region	loam
9	"Dary-Bulak-Abshir" LLC	Kara-Unkursay deposit (shale-cement raw materials), Nookat district, Osh region	shale - cement raw materials
10	CJSC "South Kyrgyz Cement"	South-eastern part of Nadir deposit, Kadamjai region, Batken region	iron
11	"Dannur-Yug" LLC	Mady deposit, Kara-Suu district, Osh region Western flank of eastern part of Nadir deposit, Kadamjai district, Batken region	loam, iron
12	OJSC "Kyrgyz-Tash"	Ak-Tash marble deposit, Ak-Tash deposit, south-eastern part, Kochkor district, Naryn region	marble
13	"Orion Mining Company" LLC	Sary-Tash deposit (shell limestone), Uzgen district, Osh region	shell limestone

14	"ESK LTD" LLC	Kara-Chatyr deposit (clay shales), Central area of Kyrk-Kol deposit, Nookat district, Osh region, Kuvasai (limestone), Kadamjai district, Batken region	limestone
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Appendix B. Template beneficial ownership declaration form

This beneficial ownership declaration form has been issued by the EITI International Secretariat as a model template to countries that wish to collect beneficial ownership information as part of the EITI reporting process. The MSG attaches this form to the reporting templates distributed to extractive companies. The template includes sections *[bracketed and highlighted in red]* to be completed by the extractive company.

Company identification		
Full legal name of the company (including legal form of legal entities)		
Unique identification number		
	Is the company a publicly listed company, or a wholly owned subsidiary of a publicly listed company? <input type="checkbox"/> Yes. <input type="checkbox"/> No ⁴	
Contact address (registered office for legal entities)		
Shareholder(s)	Government/private legal entity	% interest
Declaration form prepared by	[Name]	[Position]
	[Email address]	[Telephone number]

Beneficial ownership definition

In accordance with the *EITI Standard*, Requirement 3.11.d.i, a beneficial owner in respect of a company means the natural person(s) who directly or indirectly owns or controls the legal entity. Further to Requirement 3.11.d and in accordance with the decision of the Kyrgyzstan EITI Supervisory Board, **a beneficial owner is defined as a natural person who has the title to property, influences transactions, obtains a certain benefit from transactions, and who has an ownership stake of at least 5%. If the beneficial owner is a politically exposed person their stake must be disclosed irrespective of the size of the stake.**

⁴ In accordance with the *EITI Standard*, Requirement 3.11.d.iii, publicly listed companies, including their wholly owned subsidiaries, are not required to disclose information about their beneficial owner(s). Therefore, any publicly listed companies, including their wholly owned subsidiaries, are not required to complete the rest of this beneficial ownership declaration form.

Beneficial ownership declaration ⁵

In accordance with the beneficial ownership definition, as per [date] the beneficial owner/s of the company/companies [company] is/are:

Name of the beneficial owner	Information about how ownership is held or control over the company is exercised				Date when beneficial interest was acquired	Means of contact	
	By shares		By % of voting rights				Other
[Full name as it appears on national identify card] [Date of birth and/or national identify number] [Citizenship] [Country of residence]	[no. of shares]	[% of shares]	[% of direct voting rights]	[% of indirect voting rights]	[Where control over the company is exercised through other companies (legal entities), details (the chain) should be provided here.] ⁶	[date]	[residential /service address] [other contact details]

Are any of the beneficial owners a Politically Exposed Person (PEP)?

Yes. : Name _____ . Public office position and role:

Date when office was assumed: __: __ / __ / ____ Date when office was left, if applicable: __ / __ / ____

No.

Attestation (verification)

I, the undersigned, for and on behalf of the reporting entity confirm that all information provided in the above beneficial ownership declaration is accurate and reliable.

[Name] _____

[Position] _____

[Signature] _____

[We attach further information to verify the accuracy of the beneficial ownership information provided:]

....

....

⁵ Companies should provide details about their beneficial owners here. Where, in accordance with the beneficial ownership definition, there is more than one beneficial owner, the information should be provided for all beneficial owners.

⁶ For example, if the beneficial owner holds shares in the entity wholly via a separate company, details of this company, its place of registration and its identification number should be provided here.

Appendix C. List of experts who participated in the study

	Name	Position	Organisation
1	Karybek Ibraev	Head	KR EITI Secretariat
2	Jamalbek Turgunbekov		KR EITI Secretariat
3	Valentin Bogdetsky	Board Member	Kyrgyz Mining Association
4	Vyacheslav Isaev	President	Guild of Miners SPEKTR (company)
5	Kalia Moldogazieva	Coordinator	NGO Consortium to Promote the EITI in Kyrgyzstan
6	Natalia Ablova	Director	Human Rights Bureau
7	Turgunbek Atabekov	Director	Foat Public Association
8	Tom Mayne		Global Witness
9	Kana Seidaliev	Partner	GRATA law firm
10	Aleksandr Karpanini		GRATA law firm
11	Talaibek Dyikanov	Executive Director	Institute for Developing Communities and Mining
12	Burulkan Mambetshaeva	Head of the Accounting and Tax Statistics Department	State Tax Service of the KR Government
13	Aniy Isabaeva	Lead Specialist	Department for Economic Sectors Expenditure Planning, Finance Ministry
14	Mira Mamaeva	Chief Specialist	Revenue management, KR Social Fund
15	Ulanbek Ryskulov	Deputy Director	State Agency for Geology and Mineral Resources of the KR
16		Representatives	- National Statistics Committee
17			- State Property Fund
18			- Bashat Public Foundation