



Zambia EITI Beneficial Ownership Roadmap

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EITI Standard provisions on beneficial ownership

2.5 Beneficial ownership

- 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:
- i. The EITI Report documents the **government's policy and MSG'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.
 - ii. By **1 January 2017, the multi-stakeholder group publishes a roadmap** for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the **MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report**.
- 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 **bid for, operate or invest in extractive assets** 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.
- g) The EITI Report should also disclose the legal owners and share of ownership of such companies.

1.1 Objectives on Zambia's national reform priorities

Our objective is for beneficial ownership disclosure to help address the following reform priorities in Zambia:

- Promoting good governance and accountability in the extractive sector;
- Deterring corruption in the allocation of extractive rights;
- Preventing abuse of Zambia's tax and incorporation rules;
- Support of efforts to address money laundering and other financial crimes in the economy;
- Promoting Zambian citizens' participation in the monitoring of extractive activities, including local content provisions;
- Promoting citizens getting the full economic benefit of the nation's natural resources, especially in communities where extraction is taking place.

We will pursue linkages between ZEITI's beneficial ownership work and these broader reform processes by:

- Coordinating closely with government agencies (including PACRA, Ministry of Mines, FIC, Auditor General, ZRA, ZDA, Ministry of National Planning, Ministry of Justice, Ministry of Local Government) and CSOs (including those on the ZEITI CSO contact list), the Chamber of Mines, traditional leadership, and media working on the implementation and improvement of mineral licensing, tax abuse prevention, and reforms to the Companies Act in Zambia.
- Coordinating with other initiatives like the Mineral Value Chain Project and the AMV.

1.2 Institutional framework for beneficial ownership disclosure

We will consult with the applicable government agencies that currently manage the following data collection processes in Zambia to determine if public beneficial ownership disclosure could be added to and sustainably managed as part of these systems:

- Mining rights database:
 - Coverage: Applications for exploration license/mining license/processing license/trading permit, etc., including coverage of joint ventures. (Covers companies that "bid for" extractive assets)
 - Key contacts: Ministry of Mines, Director of Mining Cadastre Office & Regional Mining Bureaux
- Company filings database:
 - Coverage: Foreign and local company registration, incorporation, annual reporting (Covers companies that "operate" and "invest in" extractive assets)
 - Key contacts: PACRA and regional offices, and Ministry of Justice regarding interpretation of Companies Act reforms

We will consult with the key contacts noted above to identify reform opportunities for (and to address any potential obstacles to) embedding requirements for public beneficial ownership disclosure in:

- A Statutory Instrument issued in relation to the Mines and Minerals Act
- The Companies Act

1.3 Defining beneficial ownership

Having considered existing domestic and international definitions, we will pursue the consultation noted above based on an initial proposed beneficial ownership definition of:

“A ‘beneficial owner’ is a natural person who – directly or indirectly – ultimately owns, exercises substantial control over, has a substantial economic interest in, or receives substantial economic benefit from a corporate entity.”

Our initial proposal is that no threshold should be applied.

Further consideration: If a threshold is ultimately utilized, we will keep in mind that Zambia’s Income Tax Law contains a 5% threshold – noting, however, that this does not relate to full beneficial ownership, but rather just to shareholding. The Citizens Empowerment Act and Securities Act also uses a 5% threshold.

1.4 Defining politically exposed persons

Having considered existing domestic and international definitions, we will pursue the consultation noted above based on an initial proposed politically-exposed persons definition drawn from the Financial Intelligence Center Amendment Act No. 4 of 2016:

“‘politically-exposed person’ means—

- (a) an individual who holds, or has held, public office, and includes— (i) a Head of State or Government; (ii) a Minister; (iii) a Deputy Minister; (iv) a politician; (v) a political party official; (vi) a judicial official or other senior official of a quasi-judicial body; (vii) a military official; (viii) a member of an administrative, management or supervisory body of a State owned enterprise;
- (b) an individual who is, or has been, entrusted with a public function by a State, public body or a local or international organisation;
- (c) an immediate family member of a person referred to in paragraph (a); or
- (d) a close associate of a person referred to in paragraph (a).”

1.5 Detail of disclosures

We will pursue the consultation noted above based on initial proposed disclosures from individual beneficial owners of:

- Name of beneficial owner(s), including any alternative names used (this would be a new addition in Form 2);
- Nationality (include all, if dual) and country of residence;
- TPIN (both beneficial owner and reporting company), National Registration Card number, passport number, and date of birth;
- Residential (non-public) or service address, and means of contact;
- Designation of any PEP beneficial owner (regardless of size of interest), title of relevant public office (or other reason for PEP designation) and dates the public office was held (would be new in Form 2); and
- Level of ownership/control and description of how ownership or control is exerted (would be new in Form 2).

And based on initial proposed disclosures from companies of:

- Signed statement of accuracy regarding the named beneficial owner(s) (see Section 1.7 below); and
- Excerpts of the company’s corporate structure and related parties, drawn from the filings made pursuant to Section 97 of the Income Tax Law. We will seek to determine what information could be made public (if any) from such filings, or whether separate disclosures would need to be made.

We may further refine this disclosure list by:

- Reviewing the existing mining rights database categories to determine where additional categories may need to be added to cover beneficial ownership disclosures.
- Considering how Form 2 for company registration (and other such forms) may need to be amended to accommodate additional beneficial ownership disclosures.

1.6 Data collection plans

Plan A – Mainstreamed disclosure: By January 2020 at the latest, we aim to collect beneficial ownership information by providing a link in the ZEITI report and on the ZEITI website to updated versions of the following databases, which would contain up-to-date public beneficial ownership information:

- Mining rights database: Covering applications for exploration license/mining license/processing license/trading permit, etc., including coverage of joint ventures. (Covers companies that “bid for” extractive assets)
- Company filings database: Covering foreign and local company registration, incorporation, annual reporting (Covers companies that “operate” and “invest in” extractive assets)

Plan B – Interim ZEITI Report disclosure: Until the above disclosure mechanisms are operational, and starting with the 2016 ZEITI report, we will distribute an updated beneficial ownership declaration form using the “beneficial owner” and “politically exposed person” definitions noted above, along with new beneficial ownership reporting guidance, to all ZEITI reporting companies.

To identify the most efficient and sustainable data collection approach, we will pursue:

- Outreach to PACRA, Ministry of Mines, etc., as noted above.
- Consideration of whether linkages between these domestic databases and the global beneficial ownership register (GBOR) platform could help support beneficial ownership data collection efforts in Zambia.

1.7 Methodology for assuring the accuracy of data

Plan A – Mainstreamed disclosure:

We will propose that beneficial ownership disclosures be subject to the same data assurance requirements that are currently part of the:

- Mining rights database: Currently, the Mining Cadastre office asks companies holding licenses to authenticate their quarterly filings, and then the agency reviews and validates that information.
- Company filings database: Currently, corporate information disclosed to PACRA is checked by an agency officer, the information system rejects fields that are not fully completed, and information is then checked again before filing. Officers of the company have to sign filings and changes to filings. The filings are digitized. Incorrect information would be considered fraud and pursued in court.

Plan B – Interim ZEITI Report disclosure:

Until the above disclosure mechanisms are operational, and starting with the 2016 ZEITI report, we will require the following beneficial ownership assurance mechanisms as part of the ZEITI reporting process:

- Company must attach a statement signed by a senior management team official or senior legal counsel confirming that the declaration is accurate and complete.

1.8 Data timeliness

Plan A – Mainstreamed disclosure:

Existing timelines for mining database filings and company registration are adequate and we will propose that beneficial ownership disclosures be subject to the same data timeliness requirements, including:

- Ministry of Mines has to approve changes to ownership before they're made.
- Registrar must be notified within 21 days of ownership changes.

Plan B – Interim ZEITI Report disclosure:

Until the above disclosure mechanisms are operational, and starting with the 2016 ZEITI report, we will use the modified model beneficial ownership declaration form to ask reporting entities to:

- confirm owners as per a specific date to be determined by the ZEC, and
- to disclose the date that the beneficial interest of its owners was acquired.

1.9 Data accessibility

We will pursue both the mainstreaming consultation noted above (**Plan A**) and all interim ZEITI report beneficial ownership disclosures (**Plan B**) based on the goal that:

- all disclosed beneficial ownership data will be made public in a machine-readable, open data format (xlsx or csv) online;
 - beneficial ownership data files will be coded or tagged so that the information can be compared with other publicly available data; and
 - all public beneficial ownership data would not be subject to a paywall. We note that this will require consultation, because access to some existing databases is currently subject to a fee of approximately \$8 per company filing, which is a source of revenue for the applicable government agencies.
- **Further discussion needed:** Consider if the GBOR could be useful to help offset costs of making beneficial ownership data available without a fee.

1.10 Capacity building needs

We will pursue capacity building on the following issues:

- Understanding of the distinction between legal and beneficial ownership.
- Knowledge management to maintain coordination.
- Technical capacity building for relevant government agencies on law enforcement related to beneficial ownership, establishment and maintenance of a beneficial ownership register, verification mechanisms, communication with companies.
- Capacity building for companies – especially high level executives – to ensure familiarity with beneficial ownership reporting, guidance on identifying, collecting and disclosing initial beneficial ownership information, as well as procedures and systems for updating and submitting data to government authorities. Also, broader capacity building on corporate transparency. The Chamber of Mines will serve as a forum for company capacity building and assist with outreach efforts, including working with ZEITI to develop a company-specific beneficial ownership roadmap.

- Capacity building for civil society could focus on public monitoring of beneficial ownership data and changes over time, how to use beneficial ownership information in advocacy and campaigns (and coordination of objectives/advocacy efforts), on networking and coordination (within the civil society network and with other constituencies), negotiation skills.
- Need research and technical skills on undertaking actual analysis of beneficial ownership (and other) data.
- Chamber of Mines will produce a guidance note on ownership structures in Zambia, which will help inform collection of data and data research.
- ZRA is working on advancing beneficial ownership and transfer pricing issues, thus experience sharing with relevant agencies from other countries and support from technical assistance providers will be key.
- FIC interested to share info with ZEITI.

1.11 Technical and financial assistance needs

We will pursue:

- Convening a team to develop a strategy for implementing the roadmap and finding resources for it.
- Developing cost estimates for the activities proposed in this roadmap.
- Exploring domestic and external sources of funding and technical assistance in order to ensure timely implementation of this roadmap.
- Maintaining close contact and coordination with organizations who can provide technical and other assistance (EITI International Secretariat, NRGI, WB, etc.)

1.12 Deadlines and responsibilities for roadmap activities

Who: ZEC leadership is key, with necessary broader consultation and support from the ZEITI Secretariat.

NOTE: The EITI Standard states that “The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG’s annual activity report” (Requirement 2.5.b.ii). **It is recommended that the roadmap includes measurable and time bound activities, and that the roadmap assigns responsibilities for the various activities. The multi-stakeholder group may wish to consider establishing a working group or committee to oversee the development and execution of the roadmap, and to present regular progress reports to the government and the multi-stakeholder group.** The roadmap must be endorsed by the multi-stakeholder group and made publicly available no later than 1 January 2017.

Write shop self-check: Does the draft roadmap cover the following?

Institutional framework for beneficial ownership disclosure

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- Consultations with government agencies in order to identify the agency (ies) that is responsible or could best suited to oversee, collate and maintain beneficial ownership information?
- reviewing any legal, regulatory or practical barriers to disclosure of beneficial ownership?
- undertaking legal reviews and amendments with a view to incorporate requirements for beneficial ownership disclosure in relevant law(s)?

Beneficial ownership definitions

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- reviewing whether national laws include a definition of beneficial owners?
- reviewing existing international definitions and definitions used in other countries?
- agreeing an appropriate definition and ownership thresholds in order to operationalize reporting of beneficial ownership?

Politically exposed persons

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- investigating existing national definitions and reporting requirements for PEPs with a view to align the beneficial ownership definition accordingly?

Level of disclosure details and data reliability

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- consultation with government, civil society and companies with a view to determine the level of detail of the beneficial ownership disclosures (nationality, country of residence, level of ownership, how ownership is exerted, date of birth, residential address, means of contact, etc.), including opportunities and challenges with such disclosures?
- identifying an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection?

Data timeliness

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- reviewing what would be the most appropriate time for data collection of beneficial ownership information?
- how to reflect changes in ownership over time, once a baseline has been established?

Data collection procedures and data accessibility

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- identifying the companies that will be required to participate in beneficial ownership reporting?
- identifying the most efficient and sustainable data collection approach, including for example developing a beneficial ownership declaration form, or adaptation of the EITI's model beneficial ownership declaration form as tools for collecting beneficial ownership data?

- increasing data accessibility, for example by publication of data in electronic or other open data formats?
- considering establishing a public beneficial ownership register, ideally integrated in existing corporate or extractive license holder registers?

Capacity building, and technical and financial assistance

Has the multi-stakeholder group considered whether the roadmap should include activities aimed at...

- capacity building and awareness raising campaigns, and/or actions aimed at identifying capacity building needs?
- identifying funding for the implementation of the roadmap and further funding for implementation of the beneficial ownership requirements on an ongoing basis?

Deadlines and responsibilities for roadmap activities

Has the multi-stakeholder group made sure that the roadmap...

- includes measurable and time bound activities?
- assigns responsibilities for the various activities?
- estimates the cost of the activities and identifies funding sources?
- considers whether it is necessary to establish a working group to oversee the development and execution of the roadmap?