Guidance note 15 on infrastructure provisions and barter arrangements

Requirement 4.1(d)

Please note that this guidance refers to the 2013 Standard. In most cases, the requirements remain the same and the guidance valid. An updated version reflecting the 2016 Standard will follow soon.

1. Summary

The exploration, extraction, transformation, and transport of oil, gas and mineral resources often requires large scale and long-term investments. In addition to the capital needed to develop these resources, countries often have other priorities for infrastructure development. In some cases, resource rich countries with limited access to capital and credit are considering "package deals" to develop their infrastructure in exchange for their natural resources. The resources involved may include exploration or production rights for oil, gas, and minerals, and other elements such as access to land, energy and water resources. The infrastructure projects may include railways, roads, ports, power plants, schools and hospitals. These agreements are interchangeably called: "infrastructure provisions", "barter agreements", "minerals for infrastructure". In the EITI Standard, these deals are addressed in section 4.1(d) as "infrastructure provisions and barter arrangements" (see box 1). Such agreements may be a means of a government accelerating its infrastructure-related development needs; conversely the value transfers inherent in such agreements, which may be governed by government-to-government agreements and involve complex supporting agreements involving a number of SOEs or private sector entities, may be opaque and difficult to track. Moreover, the value at stake may in some countries amount to a significant proportion of the total 'revenue' flows accruing to government or of the mineral resources of the country.

4.1(d) Infrastructure provisions and barter arrangements

The multi-stakeholder group and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. To be able to do so, the multi-stakeholder group and the Independent Administrator need to gain a full understanding of: the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts. Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.

Source: EITI Standard, p. 27

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In accordance with Requirement 4.1(d), the multi-stakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements when material, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The EITI Standard also encourages implementing countries to disclose contracts and agreements that establish the terms related to the exploitation of oil, gas and minerals[1], and the MSG may wish to consider whether this is appropriate in the context of any infrastructure provision or barter arrangements. Similarly, such deals may also involve State Owned Enterprises (SOEs), as the contracting party on behalf of the government. In those cases, the EITI Report must include the prevailing rules and practices regarding the financial relationship between the government and their SOE (requirement 3.6a).

There is limited experience in addressing infrastructure provisions and barter arrangements in EITI Reports. By way of example, The MSG in the Democratic Republic of Congo (DRC) considered this issue as part of their 2010 and 2011 EITI Reports. Some stakeholder commentary on the Sino-Congolese Cooperation Agreement (SCCA) in the DRC is attached to illustrate the challenges associated with addressing these issues (see section 3 below). The guidance note concludes with a list of additional resources that stakeholders may find useful in examining these issues.

2. Guidance

The EITI International Secretariat recommends the following step-by-step approach to MSGs for addressing Infrastructure provisions and barter arrangements.

Step 1- Consider infrastructure provision and barter arrangements in EITI scoping.
In establishing the scope of the EITI Report, the MSG needs to determine whether the government or government-related entity has entered into any agreements, or sets of agreements, involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. The MSG might consider tasking a consultant, the Independent Administrator, or its technical staff to examine whether any such deals have been proposed or are in force. It is recommended that the findings from this work are documented (e.g., in MSG minutes, or a scoping report).

Step 2- Develop a more detailed understanding of the agreements
Where the MSG has established that infrastructure provision and barter arrangements are material, additional work may be needed to gain a full understanding of these agreements, and the implications for the EITI reporting process. For each agreement (or sets of agreements) the multi-stakeholder group needs to gain a full understanding of:

- **The terms of the relevant agreements and contracts[2].**

- **The parties involved**: mapping of the relevant actors, which may include joint ventures arising from the contracts and the respective partners; SOEs contracting on behalf of the government; government agencies monitoring the implementation of the agreement; financial institutions providing loans for infrastructure development; and companies building the infrastructure.

[1] See Guidance note on contract transparency - Requirement 3.12. Guidance note for Requirement 3.12 provides detailed guidance to multi-stakeholder groups on how to address issues related to contract transparency.
[2] Contract disclosure is encouraged (Requirement 3.12)

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- **The resources which have been pledged by the government**, including exploration and production licenses issued by the state, tax exemptions, loan repayment programs and loan guarantees.
- **The commitments made by the counter-party, whether it be a government or one or more extractive company(ies) (and their affiliates) over the life of the project,** including infrastructure projects, investments, signature bonuses and other applicable benefit streams.
- **What mechanisms have been put in place to track, on a continuing basis, the value transfers that are taking place.**

The Secretariat recommends that the MSG documents the findings from this work (e.g., in MSG minutes, or a scoping studies and EITI Reports).

Step 3- Establish the reporting procedures

Where barter arrangements are material, the MSG is required to develop a reporting process with a view to achieving a level of transparency at least commensurate with other payments and revenue streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral company and/or government disclosures to be attached to the EITI Report.

The Secretariat recommends that the MSG includes the following information in the EITI Reports:

1. A list of projects where mineral or hydrocarbon extraction is contingent on public infrastructure provision, or other barter-type arrangements;
2. A summary of the status of each agreement;
3. A declaration from the relevant companies regarding their work on these projects during the reporting period;
4. A declaration from the relevant government agencies regarding their involvement in these projects during the reporting period;
5. Any other information as agreed by the MSG regarding the implementation of these projects; and, where available,
6. Valuations provided by independent persons of the value involved in or transferred under specific elements of the agreement (s)..

Step 4- establishing a mechanism for quality assurance of the disclosed information

The MSG may wish to task the Independent Administrator with assessing the comprehensiveness and reliability of this information, and making recommendations on opportunities to further enhance transparency in the governance of these projects.

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3. Examples from the Sino-Congolese Cooperation Agreement (SCCA)

1. Summary of the terms of the relevant agreements

Version 3: Third and final contract amendment, October 2009

(Currently under implementation)

Congolese party	Unchanged from the MOU. Gécamines, 32%.
Chinese parties	CREC, Sinohydro and Zhejiang Huayou Cobalt, 68%.[d]
Mining concessions	Unchanged from the Convention. Copper: 10.6 million tonnes; Cobalt: 626 619 tonnes.
Infrastructure worth	A maximum of $3 billion (article 6, p. 6). Article 12 stipulates that the second tranche of infrastructure investments is cancelled
Mining investment worth	Not mentioned but still widely reported to be $3 billion
DRC government guarantee for the commercial mining investment	Removed (article 8)

Source: Johanna Jansson (2013): The Sicomines agreement revisited: prudent Chinese banks and risk-taking Chinese companies, Review of African Political Economy, 40:135, 152-162

2. Examples of parties involved

The Sino-Congolese Cooperation Agreement is described as an inter-governmental agreement between a Congolese state owned enterprise (Gecamines) and a consortium of Chinese enterprises (CREC[3] and Sinohydro[4]). The agreement establishes a joint venture (Sicomines) registered and operating in the Democratic Republic of Congo, with Gecamines taking a 32% stake, and the consortium a 68% stake. Although not a party in the contract, China Exim Bank also plays an important role as it financed infrastructure projects.

[3] China Railway Engineering Corporation (CREG) is owned by the Chinese Government and is one of the world's largest construction companies.
4 Sinohydro is Chinese Company specialised in hydropower construction.

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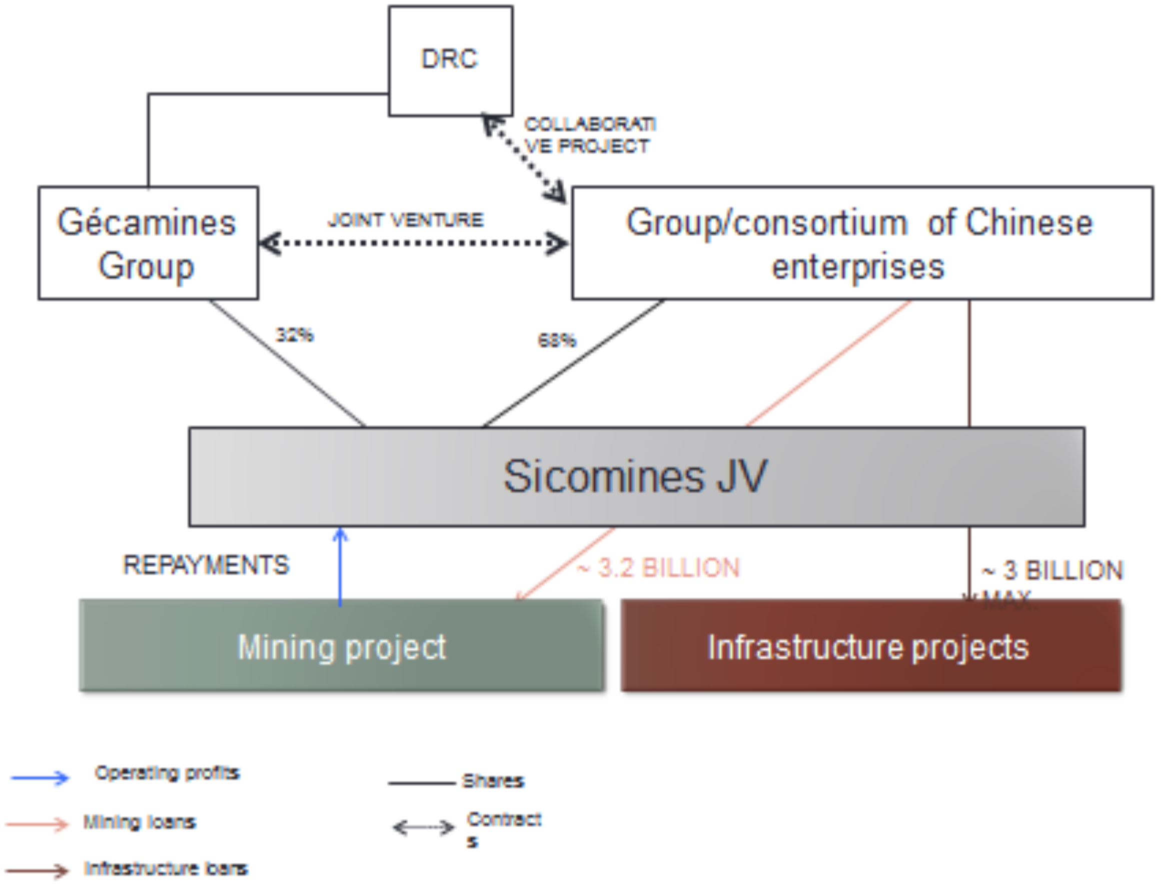

Source: The Carter Centre's mining governance project

3. Examples of infrastructure projects

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Table 1. Infrastructure projects implemented to date within the framework of the Sicomines agreement

Project	Company	Status	Quality control conducted by	Price (US$ million)
Refurbishment of the *Boulevard du 30 juin*, Kinshasa (1st part) (5.3 km)	CREC	Completed	Congolese Agency of Public Works	24.1
Refurbishment of the *Boulevard du 30 juin*, Kinshasa (2nd part) (2.5 km)	CREC	Completed	Gauff Engineering (external consultancy firm)	19.3
Refurbishment of the Esplanade in front of the People's Palace, Kinshasa (24 380 m^2)	Sinohydro	Completed	FYJL (external consultancy firm)	19.7
Refurbishment of Avenue du Tourisme, Kinshasa (7.25 km)	CREC	Completed	Congolese Agency of Public Works	24.3
Refurbishment of the Boulevards Triomphale et Sendwé, Kinshasa (4.3 km)	CREC	Completed	BIC / TCE (external consultancy firm)	29.2
Construction of a 450-bed hospital (*Hôpital du Cinquantenaire*), Kinshasa	Sinohydro	Completed, inauguration on hold awaiting a staffing arrangement	Huatong (external consultancy firm)	99.9
Refurbishment of Lutendele road, Kinshasa	CREC	2.8 of planned 4.56 km completed	African Engineering & Consulting (external consultancy firm)	21
Refurbishment of the Beni-Luna road, North Kivu (66 km)	Sinohydro	Completed	Huatong (external consultancy firm)	57.8
Grading of the national road (RN5) between Lubumbashi and Kasomeno, Katanga province (137 km)	CREC	Completed	Congolese Agency of Public Works	50.5
Asphalting of the national road (RN5) between Lubumbashi and Kasomeno, Katanga province	CREC	90 of planned 137 km completed, works delayed due to lack of finances	Congolese Agency of Public Works	87.5
Donation of solar panels	Sinohydro	Completed	N/A	11
Donation of generators	CREC	Underway	N/A	6.5
Factory to build prefabricated houses, Kisangani	CREC	Underway	N/A	7.5
				Total: 458.4

Sources: ACGT (2011), EITI (2013, p.91) and author's interviews with representatives of Sinohydro (28 November 2012) and CREC (3 December 2012).

Source: Johanna Jansson (2013): The Sicomines agreement revisited: prudent Chinese banks and risk-taking Chinese companies, Review of African Political Economy, 40:135, 152-162

4. Further reading

World Bank [Forthcoming] **Resource Financed Infrastructure: Origins and Issues**. World Bank.

Foster, Vivien; Butterfield, William; Chen, Chuan; Pushak, Nataliya. (2009) **Building Bridges: China's Growing Role as Infrastructure Financier for Sub-Saharan Africa**. World Bank. https://openknowledge.worldbank.org/handle/10986/2614

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