

This guidance note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification. Contact details can be found at www.eiti.org

Guidance note on MSG oversight of beneficial ownership reporting

1. Introduction

The EITI's beneficial ownership pilot and subsequent requirements for mandatory disclosure, as well as the Panama Leaks and global attention on beneficial ownership transparency, have resulted in an increasing number of EITI countries attempting to disclose beneficial ownership through their EITI Reports. The EITI reporting process can be a practical way to obtain beneficial ownership data from companies, especially in countries where such data is not already collected through other means. At the same time, lack of oversight by the multi-stakeholder group (MSG) of the key steps in the reporting process might result in a more time consuming and costly EITI Reports that do not deliver the desired quality of beneficial ownership information.

Around twenty EITI countries has so far attempted to include beneficial ownership data in at least one EITI Report. A review undertaken by the International Secretariat of ten EITI Reports with beneficial ownership data published at the end of 2016 indicates that despite the growing experience and knowledge of common challenges associated with such reporting, the quality of the beneficial ownership disclosures has so far not improved. In the ten reports reviewed, it is estimated that only 23% of all companies disclosed the beneficial ownership information. While most of the reports included information on the name of the beneficial owner, they did not consistently report on other identity indicators such as nationality, date of birth, country of residence and contact details. Furthermore, most reports did not disclose how the beneficial owners exercise their ownership, nor did they specify the method for assuring the data. Several reports retained the same recommendations from the Independent Administrator (IA) as in previous reports to establish registers and improve the legal framework for BO disclosure, indicating little progress with implementation of beneficial ownership related recommendations.

There are likely many reasons for the gaps in reporting. There might be a lack of guidance accompanying the beneficial ownership declaration forms or insufficient follow-up with companies when information has been missing. Companies might have been given too little time to respond, or the MSG has not been engaged enough on this issue when reviewing draft and final reports. In some cases, the lack of legal requirements might have prevented companies from reporting.

MSG oversight of the reporting process, notably deciding the mandate of the IA, supporting the follow-up with reporting companies, and scrutinising the quality of the data in the draft report, is paramount to ensuring comprehensive disclosures. The following note is intended to guide multi-stakeholder groups in overseeing beneficial ownership reporting. Addressing the questions in this checklist should help ensure better quality and more useful beneficial ownership reporting.

2. Checklist for oversight of beneficial ownership reporting

Step 1 – Agreeing the Terms of Reference for Independent Administrators

A first crucial step in the reporting process is for the MSG to *agree on the scope of work to be carried out by the IA and include adequate instructions in the Terms of Reference (TOR)*. This could include suggestions for the IA on issues such as developing a definition of BO for the purpose of the EITI Report, tailor the beneficial ownership declaration form to the national context, or facilitate capacity building for reporting entities. A standard suggestion for text on beneficial ownership is available from the EITI website¹. The MSG might also wish to consider the IA's experience with similar work in the selection process.

Figure 1 – Example of TOR for IAs with specific beneficial ownership instructions

<p>Any information requested by the MSG on beneficial ownership (BO) in accordance with EITI Requirement 2.5</p>	<p>For the purpose of this report, the Independent Administrator should:</p> <ul style="list-style-type: none"> Propose a definition of BO for adoption by the MSG. Propose the details to be disclosed about the identity of the beneficial owners. This should include whether the beneficial owners are politically exposed persons (PEPs), drawing on existing definitions of PEPs and asset declarations if available. Propose an approach for assuring the BO data assurance for adoption by the MSG. Reflect the MSG's decisions on the definition of BO, the details to be disclosed about the identity of the beneficial owners, and the data assurance process in the EITI's model BO template. Develop guidelines to reporting companies on how to identify their beneficial owners and complete the reporting template. Distribute the BO template to the companies included in the scope of the EITI Report, collect data and follow up on any missing or incomplete submissions. Compile the data in an open data format (xlsx or cvs). Present the findings in the EITI Report, noting for each of the companies in the scope of the report: the name of the BOs of each company, details about their identity, and information about how ownership is exerted. Where legal owners have been disclosed, this should be clearly distinguished from beneficial ownership. 	<p>For the purpose of this report, the MSG will:</p> <ul style="list-style-type: none"> Consider and agree the recommendations by the IA with regards to the definition of BO, the details to be disclosed about the identity of the BO, and the approach for BO data assurance. Provide information on the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership.
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¹https://eiti.org/sites/default/files/documents/2016_standard_terms_of_reference_for_independent_administrators_with_bo.docx

	<ul style="list-style-type: none"> • Provide comments on the comprehensiveness and reliability of the BO information, and present recommendations for improving beneficial ownership reporting in the future. 	
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Step 2 – Reviewing the Inception Report and agreeing an approach to beneficial ownership disclosure

The second key step in the reporting process is to review the IA’s suggested approach to beneficial ownership data collection set out in the inception report. The inception report ensures that there is a mutual understanding between the MSG and the IA of the scope of the beneficial ownership work to be carried out.

- *Has the MSG agreed an appropriate definition of the term beneficial owner that is aligned with Requirement 2.5.f.i and takes into account international norms and relevant nation laws?* The definition should include ownership thresholds and specify reporting obligations for politically exposed persons. The MSG should also agree on the scope of companies to be requested to submit information on their beneficial owners.² The MSG may wish to consult further guidance on agreeing appropriate definitions on beneficial ownership ([“Beneficial ownership: Definitions and thresholds”](#)³).
- *Has the approach to collecting and disclosing beneficial ownership information been documented in the Inception Report, and has the MSG reviewed and approved the approach?* Where the MSG has tasked the IA with proposing an approach to beneficial ownership disclosure - for example a proposed definition of beneficial ownership for the purpose of the EITI Report, a proposal for the data that should be collected related to the identity of the beneficial owner, or a proposal for the assurances that the company should provide to assure the reliability of the beneficial ownership data - this should be set out and documented in the inception report so that the MSG can review, propose modifications and eventually take a decision on the approach to be followed.
- *Has the MSG reviewed and approved the beneficial ownership declaration form?* Where the MSG has tasked the IA with developing the beneficial ownership declaration form, this should be reviewed and approved by the MSG at the inception stage. It is important that the MSG’s decisions regarding issues like the definition of beneficial ownership, the data to be collected as well as assurance procedures, are reflected in the declaration form. A model beneficial ownership declaration form is available from the EITI website⁴. The declaration form should also clearly explain what point in time the beneficial ownership data refers to, i.e. whether the names listed are the beneficial owners as per the date of the submission of the template, or whether the information dates further back, e.g. as per the end of the financial year covered by the EITI Report. The model beneficial ownership declaration form tasks reporting entities with confirming

² This has usually covered the companies included in the scope of the EITI Report, and should apply to “corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract” in accordance with Requirement 2.5.c.

³ https://eiti.org/sites/default/files/documents/beneficial_ownership_definitions_0.pptx

⁴ <https://eiti.org/document/tools-to-include-beneficial-ownership-disclosure-in-eiti-reporting>

owners as per a specific date to be determined by the MSG. It also requests information on whether the beneficial owners are politically exposed persons.

Step 3 – Guidance and instructions to reporting companies

Once the scope of the beneficial ownership work and the templates have been agreed, it is important that adequate guidance and instructions for reporting companies are developed.

Has the IA developed sufficient guidance for reporting companies on beneficial ownership reporting, with clear timelines? Experience has shown that many companies are unfamiliar with beneficial ownership reporting and will need detailed instructions for how to understand and apply the beneficial ownership definition so that they can identify their beneficial owners. The instructions could also include guidelines for what actions companies should take in the event that they face difficulties identifying their beneficial owners, including opportunities for support. The instructions should also specify what information publicly listed companies including wholly-owned subsidiaries are required to disclose, i.e. the name of the stock exchange and include a link to the stock exchange filings where they are listed (Requirement 2.5.f.iii).

Although instructions need to be carefully adapted to fit the local circumstances as well as the scope of beneficial ownership disclosures and approach agreed by the MSG, some examples of instructions and guidelines used by EITI countries are available from the EITI upon request.

The instructions should also include deadlines and instructions for when and how to submit the beneficial ownership declaration form to the IA. It is recommended that there is sufficient advance planning and notifications to avoid a rushed data collection process. Prior consultations with companies on the time needed to collect beneficial ownership information is recommended.

- *Has the MSG considered if the company instructions should include any information on the government’s policy for disclosing beneficial ownership or the rationale for beneficial ownership transparency from a company perspective?* If companies are unfamiliar with beneficial ownership reporting and there are no legal requirements mandating such reporting in the country, it might be useful to attach a letter from the EITI Champion or line minister emphasising the government’s support for beneficial ownership transparency. It might also be useful to attach an information sheet outlining the objectives and benefits of beneficial ownership transparency. A beneficial ownership fact sheet for companies has been developed by the EITI⁵, and can be tailored to fit the national circumstances.
- *Has the MSG or IA considered how to identify the company contacts that might need support in completing the templates?* The MSG and national secretariat can provide important support to the IA by developing and maintaining a list of company contacts to whom the beneficial ownership declaration form should be distributed. This might not always be the same company point of contact as for tax disclosures.
- *Has the MSG considered whether capacity building or outreach efforts are needed?* Finally, where the MSG has decided that the IA should provide capacity building for companies on

⁵ <https://eiti.org/document/beneficial-ownership-disclosure-fact-sheet-for-companies>

how to report on beneficial ownership, it is useful to do this once the instructions and guidelines have been developed.

Step 4 – Reviewing the beneficial ownership disclosures in the draft EITI Report

The review of the draft EITI Report is an important opportunity for the MSG to scrutinize the draft beneficial ownership data collected by the IA, and sufficient time should be set aside for the MSG to assess and comment on the draft report. The following questions might help in evaluating the quality of the beneficial ownership data in order to ensure that it will be of use to government, policy makers, companies and citizens:

- Is the beneficial owner(s) identified in the report a natural, physical, person? Many EITI Reports have indicated the name of a legal entity as the beneficial owner. However, in accordance with the EITI Standard, a beneficial owner should always be a human being, never a company, legal entity etc.
- Does the EITI Report explain why the beneficial owner disclosed is considered the beneficial owner, i.e. how the beneficial ownership is exercised? Most beneficial ownership definitions include several criteria for who can be considered a beneficial owner. Sometimes this includes a certain % share of ownership in the form of shares or voting rights. It can also include means of direct or indirect control, or economic benefit derived from the company's activities. Who is considered a beneficial owner will depend on the beneficial ownership definition agreed by the MSG. It is therefore helpful if the EITI Report explains how the beneficial owner disclosed meet the definition of beneficial ownership.
- Is all the data about the identity of the beneficial owner disclosed in accordance with the scope agreed by the MSG? This should include the name of the beneficial owner, the nationality, and the country of residence, and may also include national identity number, date of birth, residential or service address, and means of contact and other data points agreed by the MSG. Where companies have omitted certain details from the beneficial ownership declaration form, the reasons for that should be explained in the EITI Report.
- Does the EITI Report indicate whether any of the beneficial owners disclosed are politically exposed persons? The MSG could consider whether reporting obligations for politically exposed persons about their assets held in the extractive sector exist (i.e. asset disclosure systems applying to high-level public officials). If this information is made publicly available, the IA could draw from or make links to this information to help identify beneficial owners who are politically exposed.
- Have all companies provided the requested supporting documentation or attestations in accordance with the approach agreed by the MSG, providing assurances that the beneficial ownership data in the declaration form is true and reliable? It is helpful if the EITI Report indicates the names of any companies that have not complied with the agreed approach as well as the reasons cited for such lack of compliance. The IA could also include commentary on any gaps as well as an independent assessment of the reliability of the data.
- Have any companies failed to submit their declaration forms? In the case of non-reporting, it is useful if the IA indicates the names of the non-reporting companies as well as the reasons

cited for the lack of reporting. Where companies have attempted to identify and report on their beneficial owners, but not been successful in doing so, the EITI Report could outline the steps and efforts undertaken by the company to obtain the beneficial ownership information. Any further efforts by the IA and the MSG to follow up with non-reporting companies could also be described in the report.

- *Is the data presented in a format that is comprehensible and accessible?* Experience with beneficial ownership reporting to date shows that the way beneficial ownership data collected is collated and presented in the EITI Report varies considerably from country to country. In some cases it has been difficult to comprehend and interpret the data because of inadequate presentation. It is recommended that MSGs consider requesting that the data be presented in open data formats such as excel or cvs, which can enable further analysis and interrogation of the data. This will allow the MSG to ensure that the beneficial ownership information is disclosed in an open data format on the national EITI website or other existing platforms for disclosing extractive sector data.
- *Does the EITI Report outline recommendations for improving the reporting procedures as well as wider institutional, legal or administrative reforms related to beneficial ownership transparency?* In accordance with the TOR for IAs, the EITI Report should document lessons learnt and recommendations for improvements. This could include recommendations from the IA as well as any recommendations discussed and put forward by the MSG, incentivising the government and other stakeholders to improve the quality and usefulness of beneficial ownership reporting in the future.

Once these issues have been reviewed by the MSG, it is important that the IA has adequate time to address the MSG's comments, including any follow up required for example with companies to improve the quality of the report before it is finalised. Where appropriate, the MSG might also wish to ask for support with the review process from other stakeholders and beneficial ownership experts.

Step 5 – Reviewing the BO disclosures in the final EITI Report

- *Has the MSG's previous comments on the beneficial ownership data been addressed in the final EITI Report?* In accordance with the EITI Standard, the MSG should endorse the report prior to its publication. Before approving the report, it is important to verify that the MSG's comments on the draft report have been addressed by the IA to the satisfaction of the MSG.

3. Further guidance

The Secretariat has produced guidance covering many of the topics related to beneficial ownership reporting, including on:

- *Beneficial ownership: Definitions and thresholds*⁶,

⁶ https://eiti.org/sites/default/files/documents/beneficial_ownership_definitions_0.pptx

- *Beneficial ownership: Disclosing the identity of the beneficial owner* (Deciding on the data and level of detail to be disclosed)⁷
- *Beneficial ownership and Politically Exposed Persons (PEPs): Definitions and asset disclosure requirements* (How to address reporting of Politically Exposed Persons (PEPs) holding ownership in extractive assets)⁸
- *Beneficial ownership: Data verification* (How to ensure data reliability)⁹

An evaluation of the experience of beneficial ownership reporting during the EITI beneficial ownership pilot is also available: [EITI Beneficial Ownership Pilot Evaluation Report](#)¹⁰

EITI partner organisations including the Natural Resource Governance Institute (NRGI) has also issued guidance that might be helpful to MSGs: See for example [Owning Up: Options for disclosing the identities of beneficial owners of extractive companies](#)¹¹

⁷ https://eiti.org/sites/default/files/documents/beneficial_ownership_identity_and_level_of_detail_0.pptx

⁸ https://eiti.org/sites/default/files/documents/beneficial_ownership_and_politically_exposed_persons.pptx

⁹ https://eiti.org/sites/default/files/documents/beneficial_ownership_data_verification_0.pptx

¹⁰ <https://eiti.org/document/beneficial-ownership-pilot-evaluation-report>

¹¹ <https://resourcegovernance.org/analysis-tools/publications/owning-options-disclosing-identities-beneficial-owners-extractive>