

Terms of Reference for producing a scoping study of beneficial ownership reporting requirements in Ethiopia

1. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator (IA), and publishing annually alongside other information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is responsible for overseeing the process and communicate the findings of the EITI reporting, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business. The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

The EITI Board agreed 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. With the adoption of the 2016 EITI Standard (Requirement 2.5), the EITI Board has agreed that by 1 January 2020, all implementing countries must ensure that corporate entities disclose the identity of their beneficial owners. In addition, any politically exposed persons who are beneficial owners must be identified. It was recommended that the beneficial ownership information is made available through public registers. In order to ensure that the necessary preparatory steps and reforms are undertaken, implementing countries are also required to agree and publish roadmaps for their beneficial ownership disclosures by 1 January 2017.²

Ethiopia EITI requested beneficial ownership data for reporting companies in the 2013/14 EITI Report. This excluded publicly listed companies or wholly owned subsidiaries of publicly listed companies. The report does not mention any existing institutional framework or company reporting requirements related to beneficial ownership. Of the 35 reporting companies, 26 provided details on legal and/or beneficial owners, while 16 seem to include at least one individual as a shareholder. Due to the significance of the small-scale mining sector in Ethiopia, coverage of the companies with exploration licenses and small scale mining license holders is likely to be challenging. EEITI will in the lead up to 2020 consider issues related to establishing an institutional framework for disclosure, defining the scope and level of details of disclosures and developing efficient data collection and assurance procedures. This is likely to require cooperation with government agencies beyond the EEITI multi-stakeholder group. Ethiopia's EITI beneficial ownership roadmap provides a clearer

¹ <http://eiti.org/document/standard>

² Further details about EITI Requirement 2.5 on beneficial ownership are available from <https://eiti.org/node/4922#r2-5>

2. Objective of the assignment

The aim of this assignment is to provide the Ethiopian government and the Ethiopia EITI multi-stakeholder group with a better understanding of what kind of policies and institutional practices to have in place to collect and disclose information on beneficial ownership in accordance with the EITI Requirements. This should include whether beneficial owners are Politically Exposed Persons, such as ministers and officials who are involved in extractive industry policy-making or regulation, and whether these are required to disclose any interests they hold in entities holding exploration licences or contracts.

The objective of the assignment is to i) identify the current legal and regulatory framework and practices related to company reporting on ownership information, ii) map the companies that will be required to publish their beneficial owners in accordance with the EITI Standard, iii) assess of the institutional capacity of government agencies currently collecting company data to facilitate beneficial ownership data collection, and vi) provide recommendations for the methodology of data collection and suggest which institutions could be suitable platforms for implementing the MSG/government's objectives related to beneficial ownership.

The expected outputs from the assignment include a paper on the findings of the scoping study and the execution of a workshop to help the MSG and relevant government agencies understand key issues, challenges and next steps related to implementation of beneficial ownership transparency in Ethiopia.

3. Scope of work

The consultant will be expected to undertake the following tasks:

1. **Consultations.** The consultant will undertake broad consultations with stakeholders, in particular the members of the multi-stakeholder group as well as the government agencies involved in the management of the extractive industries (in particular company registration or issuing of extractive industry licenses) and wider stakeholders (members of Parliament, companies and civil society) on legal concerns, obstacles, ongoing reforms and opportunities for beneficial ownership disclosures. Findings of the consultations should be documented in the scoping study.
2. **Capacity building.** The consultant should deliver the following capacity building activities:
 - a) One-day workshop on beneficial ownership for members of MSG and relevant government agencies on the findings from the scoping study and next steps in disclosing beneficial ownership.
 - b) One-day training to explain the reporting template for the disclosure of beneficial ownership to the selected extractive companies. The purpose of the workshop is to explain the reporting template for the disclosure of beneficial ownership to the selected extractive companies. The workshop will provide an opportunity to respond to questions from the extractive companies regarding the template.
3. **Scoping study.** The consultant should undertake a scoping study on beneficial ownership to help understand whether the country has, or should have, in place policies and institutional practices to collect and disclose information on beneficial ownership in accordance with the EITI Requirements, and that require any ministers and officials who are involved in extractive industry

³ <https://eiti.org/document/ethiopia-beneficial-ownership-roadmap>

policy-making or regulation, to disclose any interests they hold in entities holding exploration licences or contracts. The consultant should undertake an assessment of the institutional capacity of government agencies currently collecting company data to facilitate beneficial ownership data collection in Ethiopia. This should include:

- a) A brief overview of key company laws governing extractive companies operating in the country, including any provisions related to company registers or requirements for companies to report beneficial ownership information. A list, if feasible, of the extractive companies that hold licenses to explore or exploit oil, gas and mining and that would be subject to disclosing their beneficial owners, with an indication of whether the companies are incorporated in the country or abroad. For the companies that are incorporated in the country, it should identify the legal structure, i.e. whether the company is a corporation, a limited liability partnership, a company limited by guarantee, etc. The MSG may wish to note any existing reporting requirements on ownership information applicable to the companies incorporated in the country.
- b) An overview of existing or pending complementary requirements, such as legislation that requires senior government officials and PEPs to disclose assets.
- c) Assessment of the institutional capacity of relevant government entities currently collecting company data to determine their bandwidth to manage beneficial ownership data collection in Ethiopia;
- d) A brief review of existing company registers in the country (both incorporation registries and registries of license holders), including the information contained within such registers and whether this information is publicly accessible.
- e) Identify existing Ethiopian legal definitions related to beneficial ownership that could help inform the development of suitable definitions for the current purposes;
- f) Propose a definition of beneficial ownership, consistent with requirement 2.5, national laws and country-specific circumstances and international standards (such as FATF).
- g) Based on (a-g) and the guidance provided by EITI⁴ a suggested methodology for collecting beneficial ownership information from companies and existing registries, both in the short run (through EITI reporting) and in the longer run by identifying the appropriate government agency to be responsible. This should include reviewing the beneficial ownership reporting template and company reporting guidelines used by EEITI in their data collection, and provide recommendations on how these can be improved to ensure better information on beneficial ownership and more efficient data collection. It should also include consulting with the Independent Administrator for the first EEITI Report to take into account challenges identified during the data collection.
- h) In light of the above, the Consultant will analyse/review the information collected from the extractive companies in Ethiopia on beneficial ownership in the first EITI Report and identify gaps and provide recommendations on how to improved data collection
- i) Providing recommendations for how the EITI in the country can work to address any identified challenges and possible next steps in implementing beneficial ownership disclosure.

4. Deliverables

The assignment is expected to commence on **date of commencement** culminating in the finalisation of the assignment by **date of completion**. The assignment is expected to require up to 20 consultant days. The proposed schedule is set out below:

⁴ eiti.org/GN22

Signing of contract	[insert date]
Preparation work	[insert date]
Induction field visit (includes meetings with stakeholders, workshop for the MSG and roundtable)	[insert date]
Consultation with stakeholders and drafting consultation report	[insert date]
Undertaking legal review and drafting legal amendments	[insert date]
Submission of draft paper with the findings from the review related to relevant laws and regulations (definition of beneficial owner and politically exposed person, materiality threshold)	[insert date]
Submission of draft roadmap	[insert date]
Submission of consultation report and final roadmap	[insert date]
Training for MSG (1 days)	[insert date]
Submission of final paper with the final findings and recommendations from the review related to relevant laws and regulation	24 March 2017

5. Consultant requirements

The Consultant will need to demonstrate:

- Technical and legal skills, including knowledge and work on beneficial ownership issues, transparency and governance in the extractive sector, and mandatory company reporting standards and practices.
- Knowledge of the oil, gas and mining sectors or other natural resources sectors, preferably in Ethiopia.
- A demonstrable track record in similar work.
- Experience in writing legal papers, laws and regulations or amendments to laws/regulations.
- Knowledge of Amharic is desirable but not required.

6. Administrative arrangements

- Supporting the work of a consultant from the national EITI secretariat;
- Providing the necessary non-confidential information from the members of the MSG;
- Weekly co-ordination on the work of the consultant with relevant government agencies and the national EITI Secretariat, and the EITI International Secretariat.

7. Reference materials

Relevant reference documents are available from <https://eiti.org/beneficial-ownership>.

8. Budget

The agreed fixed fee for the assignment is **amount and currency** inclusive of all taxes and mandatory payments.

9. Reporting

The consultant shall report to Emine Isciel at the EITI International Secretariat.

10. Signatures of the Parties

Jonas Moberg
Head of the Secretariat

Name of consultant
Consultant **(title)**