

# Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies

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## INTRODUCTION

Secret ownership structures enable some extractive companies to evade tax payments or hide improper relationships with government officials. Publishing information about companies' "beneficial owners"—that is, the individuals that ultimately control or profit from a company—can help to deter such practices and enable detection. While a complex and opaque ownership structure is no sure sign that an extractives company is engaging in financial misconduct, the ONE campaign has estimated that developing countries lose \$1 trillion each year as a result of corrupt or illegal cross-border deals, many of which involve companies with unclear ownership.<sup>1</sup>

This briefing explores the options countries have to collect, publish and use information on the beneficial owners of oil, gas and mining companies. It provides background on how beneficial ownership works in the extractive industries and why it matters. The briefing also offers governments, companies and civil society members a framework for deciding what information to publish, and considers the critical question of what more disclosure could realistically achieve.

International interest in corporate beneficial ownership disclosure is on the rise. In the course of developing the 2013 Extractive Industries Transparency Initiative (EITI) Standard<sup>2</sup>, the EITI International Board determined that the initiative will in the future require disclosure of beneficial ownership information in implementing countries. It was agreed that, subject to successful piloting, the EITI Board will develop detailed provisions with a view to make this an EITI requirement from 1 January 2016. Eleven countries<sup>3</sup> are currently taking part in the EITI beneficial ownership pilot, which will run until late 2015. At its 2013 summit, the G8 also adopted a new set of principles on beneficial ownership.<sup>4</sup> In recent years a number of actors—notably the US and UK governments and the EU—have taken some early steps toward making more beneficial ownership information available.

1 One, "The Trillion-Dollar Scandal," 2014, available at: [https://one.org/pdfs/Trillion\\_Dollar\\_Scandal\\_report\\_EN.pdf](https://one.org/pdfs/Trillion_Dollar_Scandal_report_EN.pdf).

2 EITI Standard, Requirement 3.11, available at: <http://eiti.org/document/standard>.

3 Burkina Faso, Cameroon, the Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Tajikistan, Tanzania, Togo and Zambia

4 UK Prime Minister's Office, "G8 action plan principles to prevent the misuse of companies and legal arrangements," 2013, available at: <https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements>. The principles do not apply only to extractives companies.

Options explored so far, in addition to the EITI pilot programs, include:

- Creation of a publicly accessible register of beneficial owners tied to a country's corporate registry.<sup>5</sup>
- Legislation that forces companies to name their beneficial owners to government when incorporating.
- Roll-out of a law or other policy that companies must name their beneficial owners to government when doing business with the state—for instance, signing a license or contract.<sup>6</sup>
- Maintenance of a restricted database of beneficial ownership data that only law enforcement or other government personnel may view.<sup>7</sup>

While an important aspect of this briefing is providing advice to countries developing plans for beneficial ownership disclosures within the EITI context, much of the content could be equally relevant for other national-level efforts. The briefing outlines seven steps for countries undertaking beneficial ownership disclosures, focusing on frequently asked questions and challenging issues associated with each step:

1. Consider the rationale and scope for beneficial ownership disclosure.
2. Decide which companies will be covered.
3. Determine the level of disclosure required.
4. Set mechanisms and timeframes for collecting the information.
5. Find a workable method for confirming the information.
6. Decide how to publish the information.
7. Improve extractive sector governance based on monitoring of information.

5 By late 2014, the UK, Denmark, Ukraine and France had expressed intentions to set up public registers of the ultimate owners of domiciled companies. The European Parliament's Fourth Directive on Money Laundering, which came into effect on June 26th, includes language requiring member countries to establish registries of beneficial ownership for companies, trusts, foundations and other investment vehicles, though it does make strong exemptions for some trusts. Beneficial ownership information would be made available to competent authorities and "other persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing and the associated predicate offences - such as corruption, tax crimes and fraud ...". For details, see the Proposal for a Directive of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, January 2015, available at: <http://data.consilium.europa.eu/doc/document/ST-5116-2015-ADD-2/en/pdf>

6 Articles 27 and 30 of the Kyrgyz Republic's 2012 amendment to its Subsoil Law (No.77) require companies to attach information about their ultimate beneficial owners when applying for a license, and further provides that failure to provide accurate information is grounds for terminating a license. A small number of other countries without such laws on the books collect beneficial ownership information during upstream licensing rounds as part of their internal due diligence on contestants. The information generally is not made public.

7 This so far has been the option favored by U.S. federal law enforcement bodies, for example at the Federal Bureau of Investigation (FBI) and Treasury Department.

The briefing also recommends that beneficial ownership disclosures be used to:

- Give government agencies more of the information they need to carry out their mandates.
- Support the work of transparency campaigners, NGOs and investigative reporters and potentially create greater trust by satisfying citizen demand for ownership information.
- Fill knowledge gaps for law enforcement personnel.
- Help investors manage risks and feel comfortable entering the market.
- Deter tax evasion.
- Reduce corruption in extractives rights allocation.

## STEP ONE: CONSIDER THE RATIONALE AND SCOPE FOR BENEFICIAL OWNERSHIP DISCLOSURE.

### **Q. Why does beneficial ownership matter in the extractive industries?**

Extractive companies play a critical role in turning a country's natural resources into revenue streams that contribute to national development. However, if an individual with government connections ensures that a company is given a license and contract in exchange for the individual getting an ownership stake, it's unlikely that the government agency in charge of the award will select the most qualified company, or that the country will get the best deal. Likewise, country benefits depend on effective tax collection, which extractive companies can evade by using complex ownership structures.

There are many legitimate reasons for a company to have a complex ownership structure, among them management control issues, corporate finance concerns, divestment preparation and choice of law considerations (e.g., taking legal advantage of favorable liability rules in other jurisdictions). However, in some cases, complexity is used to carry out and conceal two main types of bad practices:

*Tax avoidance and evasion.* Some extractives companies—especially those with footprints in many countries—use chains of legal ownership to avoid taxes in the jurisdictions where they actually produce, buy or sell hydrocarbons. Practices like transfer pricing<sup>8</sup> or trade mispricing<sup>9</sup> are costly to these jurisdictions, because they enable companies to report profits through offshore entities further down the chain that enjoy preferential tax treatment. In other cases, owners can receive their earnings in trusts, private accounts or other anonymous vehicles located in tax havens, thereby evading tax altogether. While tax avoidance strategies are not necessarily illegal, mandatory beneficial ownership disclosure can help identify these practices, allowing authorities to respond with regulation or enforcement action should they so choose.

8 Transfer pricing is the practice of setting the price for goods and services sold between related companies so as to shift taxable income from a relatively high to a relatively low tax jurisdiction. See NRG, "NRGI Reader: Fiscal Regime Design," March 2015, available at: [http://www.resourcegovernance.org/sites/default/files/nrgi\\_Fiscal-Regime-Design.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_Fiscal-Regime-Design.pdf).

9 Trade mispricing is the deliberate over-invoicing of imports or under-invoicing of exports by companies operating in a given country, usually for the purpose of avoiding tax payments in that country.

*Corruption.* Some dense, opaque extractives company ownership structures mask the potentially problematic interests and influence of certain persons. This is a particular concern when “politically exposed persons” (PEPs) hold hidden stakes in a company. Though PEP definitions vary by jurisdiction and body of law, most broadly echo the one adopted by the Financial Action Task Force (FATF): “*An individual who is or has been entrusted with a prominent public function.*” PEP ownership and control of extractives companies—while not always problematic—can be the result of corrupt self-dealing and conflicts of interest during government contracting and licensing. It can also create avenues for bribery, money laundering, contract fraud and other types of financial crime.

Disclosure of the beneficial owners of extractive companies can guard against these practices, for example by revealing the use of shell companies located in tax havens, or showing when an oil company owned by a politician receives a valuable license. This in turn protects the public interest, given that in nearly all countries, resources such as oil, gas and minerals are “public goods” to be used for public benefit.

### **Q. Who is a “beneficial owner”?**

Defining beneficial owner to cover all cases is challenging. Though various legal, industry and academic definitions exist, most refer broadly to *an individual who ultimately controls a company’s actions and/or receives its profits.*

The EITI Standard uses the following definition:

*“A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.”<sup>10</sup>*

Similarly, the United States action plan released after the G8 beneficial ownership principles includes the following definition:

*“...a natural person who, directly or indirectly, exercises substantial control over a covered legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity, subject to several exceptions.”<sup>11</sup>*

Countries have some latitude in defining “beneficial owner.” The language in the new EITI Standard is broad: what precisely does it mean, for instance, to “ultimately control” a company? The Standard also encourages implementing countries to make their own definitions.<sup>12</sup> Ideally, each country’s choice would be based on a clear understanding of what problems it most wants to address through the disclosure of beneficial ownership information, how companies operating in the country tend to structure their ownership, and whom the country hopes will use the new information (discussed later in this briefing).

Existing law could also provide guidance: when formulating a definition, governments should review any relevant language in their laws, regulations and practice on anti-money laundering/combating the financing of terrorism (AML-CFT), bank secrecy, insurance, taxation, secured transactions, property rights and bidding or contractual procedures in their extractive sector, for example. Statements of core principles used to define “beneficial owner” for purposes of due diligence “in the private banking sector

<sup>10</sup> EITI Standard, Requirement 3.11.

<sup>11</sup> White House, “United States G-8 Action Plan for Transparency of Company Ownership and Control,” 2013, available at: <http://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control>

<sup>12</sup> EITI Standard, Requirement 3.11(d).

may also be useful.<sup>13</sup> Ultimately, authorities in EITI-implementing countries may need to issue detailed written guidance notes that parse the definitions they choose so that company executives understand what information to disclose.

The large complexities notwithstanding, a successful definition should tick some basic boxes:

- *Ultimate owners*: The understanding of “ownership” must go beyond simple direct legal title to equity in the company by reaching all the way up chains of ownership. Shareholders listed in the shareholder registry are not necessarily the beneficial owners, as the next section of this briefing will explain.
- *Economic benefit*: The definition should also reach cases where an individual with no equity interest in a company, by virtue of indirect relationships or other lines of influence, receives a significant part of the company’s economic benefit (e.g., excess cash flow). The reference to “substantial economic benefit” in the U.S. definition above captures this angle.
- *Control*: Finally, provision should be made for instances where an individual with no equity interest has a significant say in company decision-making (e.g., “control” through powers of attorney or contractual arrangements).

*Shareholders listed in the shareholder registry are not necessarily the beneficial owners.*

#### **Q. Who is *not* a beneficial owner?**

Given that certain corporate details are usually contained in existing national registries, there is often discussion around whether disclosing such details would constitute beneficial ownership disclosure. However, in almost all cases, the corporate details provided in existing registries will not clearly identify a company’s beneficial owners as such. Because definitions of beneficial owner often specify “ultimate” and indirect ownership, control or benefits, the following parties do *not* constitute beneficial owners:

- *Corporate shareholders*. Only natural persons (i.e., human beings) can be beneficial owners; companies or other legal persons cannot.
- *Directors and board members*. A person is not necessarily a “beneficial owner” because he or she is a director or board member of a company, under the EITI Standard and other accepted definitions of beneficial ownership. Disclosing information about directors and board members may be useful in other ways, which we discuss further below.
- *Substitutes for a real owner*. As explained below, sometimes beneficial owners will insert other people into a company’s ownership structure to represent their interests. In such cases, the proxy should not be seen as the ultimate beneficial owner, even if he or she holds shares in the company.

13 See e.g., The Wolfsberg Group, “Frequently Asked Questions with Regard to Beneficial Ownership in the Context of Private Banking,” 2012, available at: <http://www.wolfsberg-principles.com/pdf/faq/Wolfsberg-FAQs-on-Beneficial-Ownership-May-2012.pdf>.

## Q. How does company ownership work in the extractive industries?

Many extractives companies have ownership structures that make it hard to answer the question, “Whose company is this?” A corporate records search is an obvious first step for anyone wanting to know a firm’s owners. Yet often, the names on public records only raise more questions.

It is hard to make broad, global statements about how legal and beneficial ownership work in the extractive industries. Each producing country, sub-sector or type of company can have its own conventions; some change with time. But across jurisdictions, a number of common practices can make extractives company ownership structures especially complex:

*Chains of ownership.* Sometimes an extractives firm’s named shareholders will be other companies, which together share equity through complex chains of legal ownership. The chains can be lengthy: on paper, the ownership structures of some international oil company (IOC) subsidiaries look like rambling family trees, with a dozen or more tiers of parent, child and sister companies, holding companies, special purpose vehicles (SPVs) or other non-natural persons separating the subsidiary from its ultimate parent, which in many cases may itself be publicly listed on a stock exchange.<sup>14</sup> In such a case, the company’s ultimate beneficial owner(s) may be hard to discern.<sup>15</sup>

*Nominee shareholders.* Many governments let oil, gas and mining firms list nominee shareholders on regulatory filings—sometimes without identifying them as such. A nominee shareholder holds stock in a company on behalf of a third party. Pursuant to a separate agreement, the third party can direct the nominee how to manage the shares—for example, whether to sell or how to vote on corporate resolutions. Companies will often only list the nominee’s name on public documents and not disclose the third party’s name to regulators.

*Bearer shares.* In another variation, some jurisdictions allow beneficial owners to remain anonymous through the use of bearer shares. A bearer share is an equitable security interest that is owned by whomever holds a physical stock certificate for the interest. The company that issues the certificate typically does not report the owner’s name to any regulator, nor does it disclose when the shares change hands. Some companies do not even keep internal records of who owns their bearer shares.

*Trusts.* A trust is a legal relationship in which property is held by one party—usually referred to as the “trustee”—for the benefit of another—commonly called the “beneficiary.” The trustee has legal title to the trust property, but must act for the good of the beneficiary. Given this basic set-up, different species of trusts can create particularly complex splits between legal and beneficial ownership. Shareholders in extractives companies place their equity in trust for a range of commercially legitimate or legally suspect reasons. Many jurisdictions do not require trusts to name their beneficiaries.

14 See for example the corporate mapping of British Petroleum (BP) by OpenOil using publicly available data: <http://openoil.net/corporate-networks/bp-corporate-network/>.

15 In the case of publicly listed companies, ownership can include hundreds of thousands of individuals holding and trading shares continuously.

*Offshore entities.* Oil, gas and mining are multinational businesses. Long supply chains, complicated project finance arrangements, shifting supply and demand, or concentrations of raw materials and technical expertise in different countries routinely force companies to establish corporate presences in many jurisdictions at once. These can include countries with weak transparency rules. Companies can use their offshore presences both for legitimate commercial ends or to conceal problematic owners or transfers of money.

### **Q. How do extractives companies conceal their beneficial owners?**

As noted in the previous section, the complexity of extractive company ownership structures can make identifying ultimate beneficial owners inherently challenging, regardless of a company's intentions. However, certain companies may intentionally seek to obscure beneficial owners in order to conceal improper transactions, often by exploiting these quite standard ownership structures. Beneficial owners of oil, gas and mining companies have many means to hide their interests. The most commonly used in recent years are:

*Substituting natural persons:* In the simplest cases, one or more people stand in as shareholders for the beneficial owner. In addition to nominee and bearer shareholders, these can include:

- *Family members.* This is a common choice in some jurisdictions. In 2007, for example, the government of Azerbaijan awarded majority stakes in several gold mines to a consortium of foreign companies in which the president's two daughters reportedly held an indirect stake, possibly as proxies for their father.<sup>16</sup>
- *Fronts.* In the beneficial ownership context, a "front" is an individual who stands in for a hidden owner per the terms of some undisclosed agreement. The hidden owner can use various legal and extra-legal means to control the front's actions, ranging from agency contracts and powers of attorney to criminal extortion and intimidation. In a notable case reported by Global Witness, in 2002 an elderly Romanian actress became a shareholder of Eural Trans Gas (ETG), a Hungarian firm with a contract to transport Turkmen gas to the Ukraine. The actress assumed this role to hide the true beneficial owner Dmitri Firtash, a Ukrainian oligarch. When the actress' identity was revealed, Firtash set up a series of companies to make it look as if ETG had three separate shareholders, when in actual fact he was the beneficial owner from the start, Global Witness found.<sup>17</sup>
- *Aliases.* Some PEPs even hide their interests by registering under false names. In the Malabu Oil (OPL 245) case, Nigerian oil minister Dan Etete filed incorporation papers with the country's corporate registry that listed "Kweku Amafeha," a fictional person, as the holder of Etete's own shares in Malabu. Five days later, Etete, acting in his official capacity, awarded the license for the OPL 245 block to Malabu.<sup>18</sup>

16 Jed Miller, "Mining for Gold and the Truth in an Azeri Village," NRGJ, May 2012, available at: <http://www.resourcegovernance.org/news/blog/mining-gold-truth>

17 Global Witness, "It's a Gas," July 2006, available at: <http://www.globalwitness.org/reports/its-gas/>

18 Premium Times, "Malabu oil block presidential scam: How Jonathan funneled N155billion to phony companies," June 22, 2012, available at: [http://www.premiumtimesng.com/news/5708-how\\_govt\\_funnelled\\_billions\\_to\\_phony\\_company.html](http://www.premiumtimesng.com/news/5708-how_govt_funnelled_billions_to_phony_company.html)



*Inserting opaque entities into the ownership structure.* PEPs and other politically influential individuals also can hide behind non-natural corporate shareholders with unclear beneficiaries. Political associations, community development corporations, and state- or municipality-owned investment companies as shareholders can serve to conceal the interests of politicians. Such vehicles—which ostensibly are set up to manage money on behalf of trade unions, political parties or disadvantaged groups such as host communities, women, youth or ethnic minorities—can funnel money and control into more influential private hands. Often, few rules force them to account for how they spend their money or make decisions. The use of trusts as corporate shareholders likewise can hide questionable owners and taxable profits from outside scrutiny.

*Holding assets and sending payments offshore.* Setting up legal entities in places far removed from where an extractives company operates can give it other options for moving money to hidden persons and masking lines of benefit and control. A wide range of vehicles are available, from trusts and various types of “shell” or “briefcase” companies<sup>19</sup> to private investment companies (PICs). Authorities in many banking secrecy and tax haven jurisdictions do not disclose company shareholders, much less beneficial ownership. The offshore location can make it even more difficult for investigators to pinpoint true owners, and for the governments of producing countries to fully assess and collect taxes.

*Suspect commercial relationships.* Extractives companies also can pay their hidden beneficial owners using alternatives to equity-based dividends. For example, a firm can sign a lucrative agency, consultancy or other service contract with an owner, then pay him or her regardless of performance. Or a company might sell assets at heavy discounts to another entity that the hidden owner controls. While such transactions may sometimes more closely resemble simple bribes or trade-based money laundering, they could be proof of hidden beneficial ownership if the recipient also controls the paying company’s operations such that he or she can direct the company to make payments.

There is no one tell-tale signal that a company is using its ownership structure to facilitate corruption, tax avoidance or evasion. However, a few basic signs can point to the need for closer scrutiny in some cases.<sup>20</sup> Greater transparency about beneficial ownership, it should be noted, can both expose poor practices and help rebut rumors and allegations that are in fact not true. Some of the most common red flags watchdogs have found in the extractive industries in recent years are shown in the following table:

19 For more background on these types of companies, see Jason Sharman, “Tackling shell companies: Limiting the opportunities to hide proceeds of corruption,” U4, 2012, available at: <http://www.u4.no/publications/tackling-shell-companies-limiting-the-opportunities-to-hide-proceeds-of-corruption#sthash.Pv4RmkBx.dpuf>

20 For detailed case studies and discussion of trends (not specific to extractives), see World Bank (StAR Initiative), *The Puppet Masters*, 2011, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf>



### Possible warning signs that a company has problematic, concealed beneficial owners

#### Talk in the market

- Rumors circulate that a firm is actually a particular person's company, despite appearances, or is "linked" or "close to" a PEP.
- A news story, NGO report or court case makes similar claims.
- Industry insiders or officials will not discuss who owns a company.
- A little-known person, company, or network of companies keeps cropping up in different deals, suggesting one beneficial owner has stakes in all of them.

#### Preferential deals with government

- A company's business suddenly takes off or falls apart when the government changes hands, suggesting its hidden owner's political connections were key to its success.
- A company wins a government contract or license for which it does not seem qualified based on its track record, age, or relatively unknown, inexperienced managers and shareholders.
- A company receives a contract, license or other favor—e.g., a tax holiday or import duty waiver—that officials in the awarding government typically hand out as patronage.
- An unqualified indigenous company with unclear ties to officials receives a government contract or license purportedly in the interest of complying with the country's "local content" laws or policies.
- A company signs a deal at a discounted price or on a single-source basis, outside normal competitive auction or procurement processes.
- Government does not publicize the deal.

#### Non-compliance with industry rules and standards not sanctioned by government

Government does not sanction the company for following types of non-compliance:

- A company fails to file required paperwork.
- A company routinely breaks operational regulations.
- A company never performs its contractual obligations in full, or walks away from an unfinished, over-budget project.
- Underpayment or non-assessment of taxes and/or fees.

#### Suspect commercial relationships

- A company engages in high-value transactions with little obvious commercial justification

## Q. What information should be disclosed, and how?

Given the complexity of the problem, the range of options for disclosing beneficial ownership information can look somewhat confusing, but many straightforward options exist and have the potential to bring significant benefits. For EITI, the language of the EITI Standard gives implementing countries a fair amount of discretion in building their own pilot programs, though the pilot program terms of reference (TOR)<sup>21</sup> and template beneficial ownership disclosure form offer some extra guidance and expectations.

Given the inevitable diversity of goals, needs, capacities, political constraints and industry practices, all disclosure programs—whether for EITI or another body—will have to be designed on a country-by-country basis. As things stand, disclosure rules and standards differ by jurisdiction,<sup>22</sup> but very few countries are so far publicly disclosing ultimate beneficial ownership information for companies (see reference to the European commitments, above) and, subject to the EITI pilot referenced earlier, no resource-rich developing countries currently require a significant level of disclosure.<sup>23</sup>

Nonetheless, countries are increasingly recognizing the importance of beneficial ownership disclosure, particularly in the extractive industries. We believe the following framework offers government officials a useful road map for moving forward with implementing such disclosures:

*Countries are increasingly recognizing the importance of beneficial ownership disclosure, particularly in the extractive industries.*

21 Available at: <https://eiti.org/files/TOR%20Beneficial%20Ownership%20pilot.pdf>

22 For a broad overview, see Global Witness, “Campaigners give onshore and offshore secrecy jurisdictions the red light,” 2013, available at: <http://www.globalwitness.org/library/campaigners-give-onshore-and-offshore-secrecy-jurisdictions-red-light>

23 A few jurisdictions leave open the option of collecting beneficial ownership data. In South Sudan, the Petroleum Act requires the collection of beneficial ownership data for companies holding exploration and production sharing agreements. Tanzania’s Business Registrations and Licensing Agency provides the option to request beneficial ownership information. The Kyrgyz Republic law no. 77 on subsoil use, amended in May 2014, requires that “information and documents disclosing the natural persons who are the ultimate owners and beneficiaries of the legal entity applying for the license” is provided for all companies applying for or holding a license to operate in the extractive sector. None of the laws require publication.

## STEP TWO: DECIDE WHICH COMPANIES WILL BE COVERED.

### **Q: Should disclosures extend beyond prospecting and producing companies?**

Under the new EITI Standard, for example, disclosure is encouraged for “entity(ies) that bid for, operate or invest in extractive assets.”<sup>24</sup> This is a broader pool of companies than those typically involved in the EITI reporting process. Most companies disclose information in EITI reports because they make material tax payments to the government, but this provision of the EITI Standard reflects the recognition that beneficial ownership concerns can arise long before such revenue streams come into play.

If the EITI definition is read narrowly, this could be seen as applying only to upstream license-holders. Yet other areas of the value chain—commodity sales, refining and processing, service contracting—can have equal or greater risks of corruption or tax evasion/avoidance with similar revenue implications for states. Countries should strongly consider shaping their beneficial ownership programs to cover more than prospecting and producing companies, either from the start or in later rounds. For instance, a country could require beneficial ownership disclosure from companies that buy crude oil from the national oil company, or companies that receive subcontracts from upstream operators worth over a certain amount.

### **Q: Should disclosure extend to publicly listed companies?**

As noted above, discerning the owners of individual shares of a publicly listed company can be very challenging. In light of the difficulty of identifying individual shareholders for such companies and the fact that publicly listed companies are generally already subject to significant disclosure requirements, most beneficial ownership disclosure regimes (including the EITI Standard) specifically exclude publicly listed companies and their wholly-owned subsidiaries from the requirement. Some subsidiaries of publicly listed companies may not be clearly identifiable as such; countries may therefore wish to require that any company claiming such an exemption disclose the chain of ownership leading to the publicly listed parent.

### **Q: Will the information disclosed link up to an existing data source?**

In the EITI context, for example, countries should strongly consider linking new beneficial ownership disclosures to an existing license register/cadaster, or to a new license register that they may have to be created in accordance with the EITI Standard. Then, requiring that all companies named in the register disclose their beneficial owners would ensure that at least no companies holding a license are overlooked.

24 EITI Standard, Requirement 3.11(a).

### STEP THREE: DETERMINE THE LEVEL OF DISCLOSURE REQUIRED.

#### **Q: Should there be a minimum ownership/control disclosure threshold?**

This is an important question that needs to be answered in light of realities in the extractive sector. The EITI Standard does not set a specific threshold of ownership (e.g., percentage of company shares) at which beneficial owners must be declared. Global Witness and others active in this area have recommended a ceiling of five percent or lower.<sup>25</sup>

It is critical that countries pick thresholds with care. In some oil-producing sub-Saharan African nations, for example, it is not uncommon for a beneficial owner to hold only a small interest, sometimes less than one percent of total. For large extractives projects, however, even a 1 or 5 percent interest can be quite lucrative, generating millions of dollars in rents. Long, complex chains of ownership can also mask the full extent of a beneficial owner's equity interest, especially when he or she has stakes in more than one entity in the chain. Thus, a successful disclosure program should count an individual's full aggregated interest. Facing a minimum disclosure threshold, company boards could vote to dilute their suspect owners' holdings in order to keep them unreported.

When striking a balance between ease of administration and completeness, countries should remember that shareholder equity is not a sure sign of who controls a company's cash or decisions. Thus, a threshold should apply regardless of how ownership or control is exerted. For example, if the threshold is 5 percent, then this threshold should apply whether a person maintains ownership via 5 percent of shares (directly or indirectly through a chain of companies, proxies or otherwise) or if he/she maintains 5 percent control over the company (e.g., through powers of attorney, contractual arrangements, relatives, etc.).

*A threshold should apply regardless of how ownership or control is exerted.*

25 Global Witness, "Assessment of EITI Beneficial Ownership pilots", March 2015.

**Q: Should information on directors be published?**

A corporate director is not necessarily a “beneficial owner” under the EITI Standard nor other accepted definitions. Members of the board of directors are generally responsible for making strategic decisions for a company. They are generally selected by the owners of the company and do not necessarily have an ownership interest in the company themselves, often instead receiving separate compensation. Nonetheless, in many countries, PEPs install their proxies and political loyalists on boards to collect rents for them, or to pull strings as they direct. For this reason, seeing a list of an extractives company’s board members can give a savvy investigator some clues about who is ultimately in charge.

**Q: Should nominee shareholders or directors be flagged?**

Given that nomination is one way for beneficial owners to hide in plain sight, it may be helpful for participating companies to note any nominees.

**Q: How will information on PEPs be captured?**

To be effective, designers of a disclosure program should develop one or more separate questions to cover PEPs. The EITI template disclosure form, for instance, asks a company to state whether any of its beneficial owners is or was a PEP, and if so, his or her position and dates of holding office. It is up to pilot countries to determine whether and how to incorporate and define “PEP.” Existing law and AML-CFT guidance provides the most obvious guidance on this point. The UN Convention Against Corruption (UNCAC) defines PEPs as “individuals who are, or have been, entrusted with prominent public functions, and their family members and close associates.”<sup>26</sup> This can include heads of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials. Former officials can also be PEPs if they still have influential roles in the affairs of state. Covered family members can be related by blood, marriage or other forms of civil partnership, and can stretch beyond the immediate family. Associations can be both personal and professional.<sup>27</sup> Countries should also consider requiring that a company disclose any PEP with a beneficial ownership interest, regardless of whether he or she meets the threshold eventually selected for other beneficial owners.

26 United Nations Convention Against Corruption (UNCAC), Article 52.

27 For an overview, see FATF, “Politically Exposed Persons (Recommendations 12 and 22), 2013, available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>

**Q: Are there legal obstacles to certain types of disclosure?**

In some jurisdictions, beneficial owners seeking to avoid disclosure may get the relevant companies to argue that disclosure would run afoul of the law. For example, a firm could point to provisions in the state’s privacy laws,<sup>28</sup> or cite confidentiality<sup>29</sup> and stabilization clauses<sup>30</sup> in its existing extractive contracts with government. In such cases, governments should carry out legal analysis, as several countries participating in the EITI pilot have done as part of scoping studies, and develop arguments to respond to the refusals. (See footnotes for some specific arguments.)

**Q: What components should be included in the disclosure?**

The following table organizes the options discussed above into component parts of disclosure and lists some pros and cons of each, in addition to indicating which components would likely be sufficient to meet the EITI provision on beneficial ownership disclosure. As a reminder, the EITI definition is: “A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.”<sup>31</sup>

28 One counter-argument is that citizens have an overriding public interest in information regarding the management of extractive assets which state authorities are supposed to use for public benefit. Disclosures could also be limited to shield any information that would create safety concerns for a beneficial owner—e.g., his or her address, government ID numbers or financial information.

29 This argument has clear limits. If read carefully, many confidentiality clauses in extractives contracts protect technical information exchanged as a result of the contract and not necessarily information regarding the identities of the parties or their beneficial owners. They often contain carve-outs for compliance with legal or regulatory requirements and allow the parties to mutually consent to disclosure.

30 One rebuttal here is that stabilization clauses are generally drafted to maintain economic balance—e.g., by freezing fiscal terms—more than reacting to new accountability measures such as beneficial ownership disclosure.

31 EITI Standard, Requirement 3.11.

Component	Pros	Cons	EITI alignment
<p><b>1.</b> Company must list all direct shareholders holding equity above the chosen minimum threshold by providing this information:</p> <ul style="list-style-type: none"> <li>• Shareholder names</li> <li>• Total number of issued shares, numbers and/or percentages held by each</li> <li>• Other basic corporate info (form, registration number, date of incorporation, address of record)</li> </ul>	<ul style="list-style-type: none"> <li>• Relatively easy to administer</li> <li>• Likely to yield a manageable amount of raw data</li> </ul>	<ul style="list-style-type: none"> <li>• Misses beneficial owners of companies with more complex chains of ownership (i.e., when direct shareholder not ultimate owner)</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient on its own (can be combined with other components)</li> </ul>
<p><b>2.</b> Company must make all the disclosures under component 1, but for all direct shareholders—i.e., no minimum ownership threshold.</p>	<ul style="list-style-type: none"> <li>• Gives a more complete picture of company ownership</li> <li>• Could expose situations in which questionable companies or individuals hold only a few shares</li> </ul>	<ul style="list-style-type: none"> <li>• Could be administratively burdensome, yield too much unhelpful information</li> <li>• Still does not necessarily identify ultimate beneficial owners</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient on its own (but can be combined with other components)</li> </ul>
<p><b>3.</b> Company must declare names of ultimate beneficial owner(s) (i.e., not just direct shareholders) in a signed statement, including:</p> <ul style="list-style-type: none"> <li>• Ultimate holders of shares identified in accordance with Component 1 or 2</li> <li>• For non-shareholder owners, a brief description of other means of ownership or control</li> <li>• Date of birth and nationality</li> <li>• Any nominee or bearer shareholdings</li> </ul>	<ul style="list-style-type: none"> <li>• Relatively easy to administer</li> <li>• More likely to yield a manageable amount of raw data</li> <li>• For EITI: would comply with the recommendations of the new Standard</li> </ul>	<ul style="list-style-type: none"> <li>• May not expose all issues (e.g., ownership structure relevant to tax evasion, politically exposed owners),</li> </ul>	<ul style="list-style-type: none"> <li>• Sufficient</li> </ul>
<p><b>3a.</b> Component 3, plus company must also identify any, or some classes of, PEPs in its ownership structure, regardless of the size of their equity holdings (if any)</p>	<ul style="list-style-type: none"> <li>• Will expose cases in which PEPs hold only small amounts of shares</li> </ul>	<ul style="list-style-type: none"> <li>• Could be politically controversial and administratively burdensome</li> <li>• Could make the program politically non-viable</li> </ul>	<ul style="list-style-type: none"> <li>• More than sufficient</li> </ul>
<p><b>3b.</b> Component 3, plus company must also disclose chains of ownership in its ownership structure</p>	<ul style="list-style-type: none"> <li>• Could be especially useful for tracking cases of tax evasion and avoidance—e.g., through transfer pricing and trade mispricing</li> </ul>	<ul style="list-style-type: none"> <li>• Could be administratively burdensome, yield too much unhelpful, hard-to-comprehend information</li> </ul>	<ul style="list-style-type: none"> <li>• More than sufficient</li> </ul>
<p><b>3c.</b> Component 3, plus company must provide one or more additional types of information that do not necessarily relate to its beneficial ownership—e.g., directors, voting rights</p>	<ul style="list-style-type: none"> <li>• Provides interested parties with the maximum amount of useful information for researching company ownership</li> <li>• Improves the chances of researchers expose cases in which beneficial owners control a company through proxies</li> </ul>	<ul style="list-style-type: none"> <li>• Could be administratively burdensome, yield too much unhelpful, hard to comprehend information</li> <li>• Could be politically controversial</li> <li>• Could make the program politically non-viable</li> </ul>	<ul style="list-style-type: none"> <li>• More than sufficient</li> </ul>



## STEP FOUR: SET MECHANISMS AND TIMEFRAMES FOR COLLECTING THE INFORMATION.

### **Q: When will the information be collected and who will collect it?**

Ideally, the government will appoint a relevant agency to collect beneficial ownership data when:

- A company first incorporates.
- It files annual reports.
- It applies to bid for extractives licenses or other public assets.
- It signs a significant extractives sector deal with the government—e.g., receiving a license or signing an operating agreement.

In the simplest case, the same agency that publishes or otherwise records beneficial ownership information should also request and collect it. Countries who fear companies will resist a new disclosure program should check that the agency designated to request and collect the information has the legal and political authority to do so. Where this is not the case, existing legislation may require some amendment to create the necessary rights and obligations.

If an agency cannot be appointed to undertake such data collection, for an EITI pilot, another option is to add beneficial ownership questions to an existing EITI reporting template, or create an additional template for distribution during data collection. Even where an agency does not initially play this role, the EITI process should ideally be the catalyst for eventually institutionalizing this role, rather than leaving collection and disclosure as only through the EITI process.

### **Q: How will the information be updated?**

Ideally, companies would disclose any changes in beneficial ownership to the relevant agency within a reasonable period of time and this information should be publicly available. At a minimum, companies should report information on any changes in beneficial ownership in each annual EITI report.

## STEP FIVE: FIND A WORKABLE METHOD FOR CONFIRMING THE INFORMATION.

### **Q: Will the country develop a verification mechanism?**

It is unlikely that every company will be fully transparent about its beneficial owners. Some will not comply at all—especially where disclosure is voluntary.<sup>32</sup> Countries should explore ways to verify what companies declare—for example:

- Task data collectors with cross-checking submissions against readily available documents (local corporate filings, banking and law enforcement reports).
- Require that the company attach a signed, notarized attestation or affidavit to its submission.
- Ask for backup documentation such as articles of association, powers of attorney, or copies of shareholder registers.
- Where feasible, cross-check ownership information provided against asset disclosures filed by politicians, to ensure companies flag their PEPs.<sup>33</sup>
- Task data collectors with performance of deeper audits on a random selection of companies.

### **Q: Will there be penalties for false or incomplete disclosures?**

A country that collects attestations or affidavits could use these as evidence in fraud prosecutions, if a company disclosed inaccurate information. Failure to provide correct beneficial ownership data could also be treated as grounds for revoking a company's license or contract, or for barring it from competing for contracts.<sup>34</sup>

### **Q: Will failures to disclose be public knowledge?**

Ideally, a refusal or other lapse by a company to turn over info about its beneficial owners should be treated as a red flag and published by the appropriate agency and in the EITI report.

32 In a June 2014 survey of oil and gas firms in Myanmar, Global Witness found that only 13 out of 47 firms approached initially provided any data. However, by October 2014, a total of 25 oil and gas companies had disclosed beneficial ownership information, representing a majority of applicable private Myanmar-registered companies. See Global Witness, "Who Is Buying Up Myanmar's Oil and Gas?" 2014, available at: <http://www.globalwitness.org/myanmaroilandgas/>

33 For more on the use of official asset disclosures to find PEPs, see World Bank, "Using Asset Disclosure for Identifying Politically Exposed Persons," 2012, available at: [http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Using\\_AD\\_for\\_PEP\\_identification.pdf](http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Using_AD_for_PEP_identification.pdf)

34 For an example of the former, see Article 27 of the 2012 amendments to the Kyrgyz Republic's Subsoil Law.

## STEP SIX: DECIDE HOW TO PUBLISH THE INFORMATION.

### **Q: Will the data be tied to an existing platform?**

Incorporating beneficial ownership disclosures into existing, related platforms, such as license registries and contract disclosure platforms, can significantly increase the usability of such data.

### **Q: Will all data be fully accessible online?**

A program that is not open to everyone risks having less impact. As with other EITI disclosures, all information collected should be online, free, fully machine-searchable and not password protected, unless there are strong human security concerns attached.

## STEP SEVEN: IMPROVE EXTRACTIVE SECTOR GOVERNANCE BASED ON MONITORING OF INFORMATION.

Publishing beneficial ownership information would allow multiple oversight actors to work in complementary ways on the same cases of misconduct [for more on this point, see “Case study: Using beneficial ownership information to identify hidden PEPs” on p.17]. The current system for identifying the owners of extractive companies—where most data, effort and responsibility lies with law enforcement, banks and other private investors—needs serious support from demand-side actors. An OECD study found that 16 of 21 EU member countries do not comply with the FATF’s beneficial ownership guidelines for companies, which require that the identity of the real, beneficial owners of a company be available to the authorities.<sup>35</sup> Both the existing rules and institutional incentives to enforce them have been criticized as inadequate.

The benefits of publication could multiply if the new information were used in combination with other public resources. For example, experienced investigators can map human, company and transactional relationships using online corporate registries; social networking sites; newspapers; trade periodicals; land and other property records; physical and IP address data; legal record and credit searches; government data from sources such as procurement websites, contract databases, sanctions lists; and EITI and NGO reports.

*Publishing beneficial ownership information allows multiple oversight actors to work in complementary ways.*

35 OECD, “Illicit Financial Flows from Developing Countries: Measuring OECD Responses,” 2013, available at: [http://www.oecd.org/corruption/Illicit\\_Financial\\_Flows\\_from\\_Developing\\_Countries.pdf](http://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf)

**Q: Who would use the new information, and how?**

This is perhaps the foremost question governments must answer when planning new beneficial ownership disclosure programs. There is little value in publishing reams of detailed data that finds no audience. Luckily, thoughtful governments have the option of tailoring their programs to advance at least five goals, each of which involves different, though not unrelated, users:

**Goal 1: Give government agencies more of the information they need to carry out their mandates and to increase trust.**

In many natural resource-rich nations, a few powerful agencies or politicians control important information flows, not least those concerning beneficial ownership. A public registry could be a boon to diligent, observant technocrats—in finance ministries, tax agencies or the state auditor-general’s office, for example—with limited resources and political mandates to ask hard questions about sector governance issues such as the integrity of licensing and contracting processes, commodity pricing, or tax collection.

**Goal 2: Build investor confidence.**

Publicly accessible, country-level beneficial ownership registries could help banks and other extractive industry investors better assess their risks of doing business in a given country, and meet their legal obligations. This, in turn, ultimately could increase investment in the country’s extractives sector. Banking associations<sup>36</sup> and industry groups<sup>37</sup> already have supported the idea of more disclosure generally.

36 European Commission, “Communication from the Commission on Safeguarding Privacy in a Connected World: A European Data Protection Framework for the 21st Century,” 2012; FATF, “Financial sector responses to the FATF consultation on proposed changes to the FATF’s standard,” 2011, available at: <http://www.fatfgafi.org/media/fatf/documents/publicconsultation/First%20public%20consultation%20document%20responses%20financial%20sector%20part%201.pdf>

37 Institute of Directors, “Enhancing the transparency of UK company ownership and increasing trust in UK business,” 2013, available at: <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

## Case study: Using beneficial ownership information to identify hidden PEPs

In February 2012, US-listed Cobalt International announced a “world class” oil find of up to 1.5 billion barrels in Angola’s offshore Block 21. Two years earlier, the company had signed a government contract to explore the block together with a little-known Angolan company named Nazaki Oil and Gas. Shortly after the signing, a well-known Angolan transparency campaigner published allegations that Nazaki was controlled by three top Angolan officials.<sup>38</sup>

None of the three were named on Angolan regulatory filings as being among Nazaki’s seven shareholders. Six of the company’s legal owners were other individuals; the seventh was a local investment firm called Grupo Aquattro Internacional. While the three officials likewise were missing from Aquattro’s filings, a journalist at the Financial Times had noticed that Aquattro had the same registered address as another small Angolan oil company, Sociedade de Hidrocarbonetos de Angola (SHA). SHA records did list the three officials as owners, alongside one of the six individual shareholders in Nazaki. The journalist and others spent months tracking down these documents.<sup>39</sup>

When the FT approached the three officials for comment, two surprisingly wrote back confirming they were indeed the beneficial owners of Nazaki. By the time the newspaper ran this story in April 2012, Cobalt had already notified its shareholders that the US Securities and Exchange Corporation (SEC) was probing its Angolan operations for possible breaches of the US Foreign Corrupt Practices Act (FCPA).<sup>40</sup> Industry rumors—as yet unproven—began to surface that the company had made illegal payments to Nazaki’s owners in return for access to Block 21. Two years later, in August 2014, Cobalt announced that the SEC likely would pursue it for violating the FCPA. By that time, Nazaki reportedly had sold half of its stake in the block to Sonangol, the national oil company, for an undisclosed sum. The three officials also claimed to have sold out of Nazaki.<sup>41</sup> The U.S. case against Cobalt closed without further legal action in early 2015.<sup>42</sup>

Had the beneficial owners of Nazaki and Grupo Aquattro been publicly declared before 2010, the risks to Cobalt of entering into the Block 21 deal would have been substantially higher—perhaps even high enough to make the partnership a non-starter. Also, investigators like the one at the FT might have had to expend less time and energy chasing the true owners’ names.

On the positive side, the Cobalt case shows how supply and demand side actors can work on alleged corruption cases in complimentary ways. The international media spotlight arguably placed extra pressure on U.S. prosecutors to pursue Cobalt. At the same time, the potential for legal action kept journalists and NGOs reporting on the story. It is also possible that the disclosure of Nazaki’s beneficial owners by the Angolan campaigner and the FT reduced the Angolan government’s eventual losses from the Block 21 deal. While the three officials likely made a tidy profit from selling equity in the block to Sonangol, the strong public scrutiny they faced arguably forced them to hand back their equity in the block to government before any oil started flowing, possibly resulting in fewer lost rents.

38 Rafael Marques de Morais, “The Angolan Presidency: The Epicenter of Corruption,” Maka Angola, 2012, available at: <http://makaangola.org/wp-content/uploads/2012/04/PresidencyCorruption.pdf>

39 A fuller account is given in Tom Burgis, *The Looting Machine* (New York: Public Affairs, 2015), Chapter One.

40 Tom Burgis, “Angola officials held hidden oil stakes,” *Financial Times*, April 15, 2012, available at: <http://www.ft.com/intl/cms/s/0/effd6a98-854c-11e1-a394-00144feab49a.html#axzz3Lit2saRK>

41 Burgis, Chapter One.

42 Cobalt International, “Press Release: Cobalt Announces Termination of SEC Investigation,” January 28, 2015, available at: <http://www.cobaltintl.com/newsroom/cobalt-announces-termination-of-sec-investigation>

Investors already are under pressure to understand company ownership structures. Banks in particular have legal duties under AML-CFT law to find out who their sometimes obscure account holders and creditors ultimately pay. Prosecutors already have probed a number of extractives companies for partnering with firms with suspect beneficial owners—a trend that is likely to continue. Companies can escape liability for some financial crimes by showing they made attempts to find out whom they were paying. The due diligence investors conduct on oil, gas and mining firms already dredges up a lot of information on beneficial ownership. This comes at a time when many investors are growing more sensitive to the reputational and legal risks of doing business with companies with hidden owners. Some are using new forensic tools to probe suspect company ties and financial movements before they sign deals. Nonetheless, findings remain internal, are not always reliable, and some deals with serious red flags go ahead. Several studies of the financial sector found that high numbers of banks fail to comply with existing “know your customer” rules and other guidelines for determining beneficial ownership.

Governments which publish beneficial ownership information will give investors new data for their due diligence processes, and raise the bar for those processes.

**Goal 3: Increase accountability and trust among stakeholders.**

Civil society, broadly defined, is another obvious audience for new beneficial ownership information. Placing more beneficial ownership information in the public domain would give activists, journalists and NGOs a new avenue for reporting on the probity and value of some natural resource deals. Regulatory filings containing data on corporate ownership are essential to corruption investigations by mature NGOs like Global Witness, Human Rights Watch and Berne Declaration, and to the work of seasoned investigative journalists. The information helps them verify comments from human sources and gather enough evidence to avoid defamation suits. As things stand, difficulties proving beneficial ownership routinely keep NGOs, media houses and other industry watchdogs from reporting on serious cases of oil, gas and mining sector corruption.

Beyond anti-corruption work, beneficial ownership disclosure also promotes the more straightforward goal of providing greater clarity on which companies and individuals are active in a country’s extractive sector. This can be important in oversight (particularly by non-governmental actors) of the capacities and track records of these players in important areas (e.g., financial, technical, social, environmental). Beneficial ownership disclosure can also benefit government by reducing the rumors and controversies that often emerge from incomplete information. By satisfying citizen demand for ownership information, government can ideally lay the groundwork for greater trust of how it manages its citizens’ assets.

**Goal 4: Fill knowledge gaps for law enforcement personnel.**

In many countries, prosecutors, police and intelligence officers have the most beneficial ownership information after the companies themselves. Some jurisdictions—the US, for example—keep non-public databases of beneficial owners that only law enforcement officers can use. The quality of information in these can be questionable, however, and officials say tracing lines of beneficial ownership is often the toughest part of building bribery prosecutions, money laundering cases, or asset forfeitures in the extractives sector.

Access to additional and more comprehensive data could make it easier for them to join up the dots and take cases forward. It could also help financial regulators target corrupt extractives companies and their backers with “smart sanctions” such as travel bans, asset freezes, and placement on do-not-trade lists.

**Goal 5: Deter corrupt or otherwise illegal acts.**

Anonymity and opacity can leave extractives sector players feeling comfortable to engaging in bribery, tax evasion or other malfeasance on the simple assumption that they cannot be found out. Having their names publicly linked to the companies they would use to sidestep taxes or engage in corruption could prompt some to think twice about the risks and rewards, independent of any law enforcement, civil society reporting or other work by accountability actors.



## LIMITATIONS AND PROSPECTS

Publishing beneficial ownership information is not a panacea in the fight against corruption, tax avoidance and evasion, or related practices. At a time when enthusiasm for the idea is high, all parties working on the issue need an honest appraisal of what disclosure can and cannot do.

In terms of limitations, it is important to note that a beneficial ownership disclosure program cannot mitigate all the ways in which PEPs or other unqualified but politically connected individuals infiltrate extractives companies. The easiest way for a company to compensate its beneficial owner is to pay dividends out of earnings. But the complex operating environments of the extractive industries create many other ways for companies to reward hidden owners with contractual alternatives to equity. A government-run disclosure program could try to traverse this thicket of transactions and partnerships, but there should be no illusions about the potential complexity involved.

The ownership of oil, gas and mining companies is often a puzzle, for all the reasons covered in this briefing. Even the best-designed disclosure programs will probably leave many puzzles unsolved, and the first rounds of disclosures could bring more questions than answers; those who seek to hide ownership interests will likely adjust their own behavior in light of disclosure programs. Learning in this area will therefore necessarily be iterative. The authors of one recent analysis said of the EITI pilot program, for example: “The basic purpose is to check what information about company beneficial ownership exists, to identify weaknesses, and to determine the necessary steps to facilitate greater transparency.”

The main achievement of a successful beneficial ownership program would be improved access to information for the people and institutions responsible for monitoring the conduct of extractives companies, including “external” oversight actors such as civil society organizations and the media. The amount of publicly available data on who ultimately profits from and controls the operations of oil, gas and mining companies has been growing for some time. Higher regulatory disclosure burdens, new stock exchange listings, digitization of government records, court cases, investigative journalism, NGO campaigns and greater investor sensitivity all have added to what can be found in the public domain. At the same time, overall transparency of company ownership remains low and is at the heart of natural resource governance challenges such as corruption and tax evasion. The comprehensive disclosure of beneficial ownership information therefore offers an opportunity for significant improvements in the governance of natural resources.

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