



## Overview of the Beneficial Ownership (BO)

Natural Resources (minerals, oil and gas) have potential to provide a means for a country to reduce poverty and achieve inclusive and sustainable change if effectively managed from the stages of application and awarding of licenses/contracts through to revenue collections and spending. Applications and awards of licenses/contracts for mining, oil and gas resources are prone to corruption hence adequate mechanisms such as laws, regulations and accountable institutions that allow for disclosure of beneficial owners of the companies awarded licenses and contracts are critical.

Disclosure of beneficial ownership (BO) will enhance accountability by corporations through reduced risks of conflict of interest, deterrence of corruption during allocation of licenses, an equal playing field for all companies who intend to bid and reduced risk of transfer mispricing and tax evasion. All these collectively and consequently, will help improve trust between government, citizens and extractive companies.

The Extractive Industries Transparency Initiative (EITI) requires all EITI implementing countries to ensure that by 2020 all companies that are applying or holding mining, oil and gas rights comply and disclose the identity of the individuals who directly or indirectly own, control and economically benefit from a company regardless of their political status. As for now more than 20 EITI countries are working hard to include beneficial ownership in their EITI related reports.

Despite this positive development, several countries face a challenge of defining what beneficial ownership is and what metrics should be included or excluded in providing a meaning of the term. For instance, towards establishment of BO in Ghana, there was a major disagreement between stakeholders on the definition of Politically Exposed Persons (PEP), and whether family members who may not necessarily approve of the PEPs' political role should be compelled to disclose their business interest. Several recommendations have been provided to minimize the challenge, one among them being to conduct BO disclosure meetings with stakeholders to propose definitions of BO and Politically Exposed Persons, as well as the level of details to be disclosed and how to approach the disclosure.

EITI, the global driver for disclosure of beneficial ownership, however, defines BO as the natural person(s) who directly or indirectly ultimately own(s) or controls the corporate entity<sup>1</sup>. Moreover, Natural Resource Governance Institute (NRGI) defines a beneficial owner as "a natural person who is, directly or indirectly exercise substantial economic benefit from a company"<sup>2</sup>. Nevertheless, there is also a challenge in identifying who is qualified to have substantial economic benefits. A paper written by Westenberg and Sayne (2018) suggests that setting thresholds and defining substantial economic benefits is difficult because a PEP might exercise control in the company via informal ways which are not systematically understood in the corporate governance. They recommend the country to provide a definition of PEP that captures how corruption through hidden ownership happens.<sup>3</sup>

---

<sup>1</sup> <https://eiti.org/beneficial-ownership>

<sup>2</sup> [https://resourcegovernance.org/sites/default/files/documents/beneficial-ownership-screening\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/beneficial-ownership-screening_0.pdf)

<sup>3</sup> [https://resourcegovernance.org/sites/default/files/documents/beneficial-ownership-screening\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/beneficial-ownership-screening_0.pdf)

## Government Pledge for Beneficial Ownership

On 12th May 2016, during the anti-corruption summit in London, Prime Minister of The United Republic of Tanzania Hon. Kassim Majaliwa assured stakeholders that the government will ensure that beneficial ownership information of the extractive companies is publicly available through a central register by the year 2020. Hon. Majaliwa further agreed to establish bilateral arrangements for information sharing among partner countries.<sup>4</sup>

Tanzania being one of the EITI implementing states, has taken a number of initiatives including undertaking a pilot study in 2017 for beneficial ownership disclosure and formulating and amending a number of laws and regulations that govern the sector to cover issues in relation to beneficial ownership disclosure.

Progress to achieve full beneficial ownership disclosure, however, is relatively minimal. There are likely to be many factors hindering full disclosure including but not limited to lack of harmonized laws related to beneficial ownership.

## Tanzania Legal Framework

There are several statutes requiring disclosure of certain information of the extractive companies. However, these statutes lack harmonization of provisions that target disclosure of beneficial owners of the extractive companies.

### *The Companies Act of 2012*

This Act requires companies to provide information on the variations of shareholders when a company is registered<sup>5</sup>. The challenges, under this law are:

- It is limited to name/information of shareholders only; it does not extend to the beneficial owners. The shareholder can be a company or an individual at the legal forefront of the company and the real individual owner can remain anonymous.
- It is unclear on whether Business Registration and Licensing Agency (BRELA) is responsible for getting information on the shareholders and beneficial owners of companies that are registered outside but invest in Tanzania.

### *The Mining Act 2010 (revised 2018) and its Regulations*

There is no specific provision that require mining companies to provide information of their beneficial owners neither during applying for mineral rights nor at the extraction stage. However, The Mining (Mineral Rights) Regulations of 2018, regulation 16, requires applicants for Primary Mining License (PML) to submit names of their shareholders and not beneficial owners<sup>6</sup>. These regulations are silent on the disclosure of the beneficial owners on the application of the other types of mining licenses. For example, Special Mining License for the large-scale mining operations does not mandatorily require for disclosure of beneficial owners. This may lead to corruptions, tax evasion, illicit financial flows and terrorist financing.

---

<sup>4</sup> [http://www.teiti.or.tz/?page\\_id=1602](http://www.teiti.or.tz/?page_id=1602)

<sup>5</sup> [http://brela.go.tz/index.php/about/ors\\_manual](http://brela.go.tz/index.php/about/ors_manual)

<sup>6</sup> The Mining (Mineral Rights) Regulations 2018

## ***Petroleum Act 2015***

The Act regulates upstream, midstream and downstream petroleum activities. Provision 49 of the Act provides power to Minister and Petroleum Upstream Regulatory Authority (PURA) to obtain information in connection with the application for license. This provision provides mandate to PURA to ask for information on the “controlling power whether direct or indirect” of a company. However, the provision can be insufficient to discover beneficial owners of the companies. Moreover, the scope of information needed could be broad and not necessarily target disclosure of beneficial ownership of the extractive companies. This provision may cause biasness and corruption since the Minister and PURA may only act based on their wishes.

## ***TEITA Act of 2015***

Section 16 (1b) requires TEITI Committee to cause the Ministers responsible for Mining and Energy to publish names of the individual shareholders of respective extractive companies.

- The section is limited to names of individual shareholders only and it does not extend to the beneficial owners. This is very limiting especially where shareholder companies are also considered legal persons. To effectively disclose beneficial ownership, the natural persons who ultimately own the shareholding companies must be known and their level of interest.
- Disclosure of names of the individual shareholders is not enough in the BO discourse, it might lead to provision of limited information which might not be enough to identify beneficial owners.
- TEITA Act 2015, lacks the definition of the beneficial ownership and information that need to be considered/included in the disclosure of the beneficial ownership such as definition of the politically exposed person (PEPs) and to provide beneficial ownership threshold.

Despite the challenges in the Act, there have been a number of initiatives in place towards developing mechanism for Tanzania to collect and publish extractive companies' beneficial owners. The TEITA regulations of 2019 sub regulation 12(1) provide for information required for beneficial ownership disclosure and sub regulation 12 (2) companies are required to attest the beneficial ownership declaration forms and supporting document signed by the companies.

## Recommendations

- It should be a legal obligation for companies to disclose beneficial owners when applying or renewing a license.
- The government should attain its commitment to establish the BO register by 2020.
- TEITA Act or regulations should clearly define what beneficial ownership is. It should consider definitions provided by EITI as well as the Natural Resource Governance Institute (NRGI).
- Companies Act should be amended to include definition of BO which will demand for detail disclosure such as level of details to be disclosed and accuracy and authenticity of the data.
- The legal framework should provide for the additional information that can be included in the disclosure of the Beneficial Ownership as provided in the EITI standards;
  - Brief description of the means of ownership or control.
  - Information of the company's family (e.g. names of companies that are parents, subsidiaries, related companies etc.)
  - Signed statement of accuracy from the company
  - Timely updates when beneficial ownership changes.

TEITA act or its regulations should have a well-articulated interpretation of the politically exposed person (PEPs). Since the existing interpretation as it stands in The Anti-Money Laundry Act of 2006 of the term is limited to foreign individuals leaving out local individuals.

## Conclusion

Disclosure of beneficial ownership should start at the point of applying or bidding for extractive license/contract onwards. We recommend to the Ministry of Minerals to include a provision in the TEITA Act regulation which will act as a mandatory obligation of the extractive companies to disclose ultimate owners of the companies when applying for bids of rights (contract and license). Since natural resources are public resources, it should be a priority of the government to publish names of owners (beneficial owners) of the extractive companies in a registered database which will be easily accessible to the public.