

# ***Debates EITI: Why the pushback? Barriers to public disclosure of beneficial ownership data in Latin America and the Caribbean***

## **Preparatory Note**

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**Zoom**

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## **Discussion points**

- ***Is BO information being collected in the region? How? Who are the main data collectors?***
- ***What is preventing public access to these data? What are the arguments against BO transparency? What are some country examples of where those arguments have been challenged?***
- ***How can we ensure BO disclosure in the extractive sector in Latin America in the current context? Going forward: how can we ensure data is reliable and can be put to use?***

## Background

### Why is BO transparency important?

Anonymous companies remain the major obstacle in the fight against money laundering and corruption. They enable corrupt and criminal actors, often with close political connections, to hide behind chains of companies registered in multiple jurisdictions. Recent events such as the [Fincen Leaks](#), as well as the [Panama Papers](#), [Luanda Leaks](#) and [Paradise Papers](#), put the spotlight on this issue.

Today it is no longer news that hidden beneficial ownership of companies and lack of oversight of assets held by politically exposed persons are factors that exacerbate the risks of corruption. Identifying the individuals who truly own or control a business and being aware of the possible connections between private interests and public office have become two fundamental pieces in the fight against corruption.

That is why governments, citizens, and companies increasingly want to bring the real owners of companies into the open. Currently, there are [more than 80 countries](#) around the world which have committed to BO disclosures.

Knowing the real owner of companies helps build fair markets and supports the risk management strategies of businesses. It enables effective taxation and helps tackle corruption. By reducing the scope for corruption, transparency on the beneficial owners of companies increases the chances that revenue from extractives projects will be used for development, rather than the enrichment of the few.

Access to quality beneficial ownership data strengthens accountability by improving governance of energy and mining revenues, supporting business and curtailing corruption and illicit financial flows.

### Knowing the face behind the names in the extractive sector:

Oil, gas and mining projects can yield great profits both to extractive companies and governments. However, where governance is weak, companies may be given access to lucrative extractive projects for unfair reasons. Protecting anonymity can deter investment and make it harder to curb corruption. It can enable wrongdoers to hide behind a chain of companies often registered in multiple jurisdictions.

Beneficial ownership information supports anti-corruption efforts through the value chain – from licensing to project closure. It is estimated that [developing countries have lost USD 1 trillion](#) a year since 2011 as a result of corrupt or illegal deals, many of which involve anonymous companies.

In the extractive sector, the potential for resource wealth to support or hinder development makes corruption particularly abhorrent. The extractive commodities we rely on in our everyday lives come with a high risk: [one in five cases](#) of transnational bribery occur in the mining, oil and gas industries.

Disclosing the identity of the people behind the companies operating in the extractive sector, can not only reduce the scope for corruption, but also give way to other positive effects:

- Beneficial ownership transparency helps prevent conflicts of interest and can help ensure compliance with anti-corruption requirements.

- Once published, citizens can use beneficial ownership information to work with law enforcers, journalists and others to hold those who misuse anonymous companies to account.
- Beneficial ownership transparency helps prevent tax evasion and ensures that governments get the revenue they are owed.
- Increased transparency around real owners can increase trust and accountability for citizens and governments.
- BO data supports governments in obtaining the highest value for their extractive contracts.
- Hidden ownership poses problems for responsible companies, since it obscures the identity of business partners, or the beneficiaries of the companies with whom they do business.
- Transparency about company ownership can reduce reputational and financial risks for companies operating in the sector, supporting responsible investment. BO disclosures create a more predictable investment climate and a level playing field for all companies.

### BO in the EITI Standard

[Requirement 2.5](#) of the EITI Standard asks countries to uncover the beneficial owners operating or holding interests in their extractive industries. In doing so, it recommends that implementing countries maintain a **publicly available register** of the BOs of the corporate entity(ies) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.

It also requires that information about the identity of the beneficial owner includes the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

Since the entry into force of the requirement, on 1 January 2020, there has been specific Guidance created by the EITI Board on its Validation (can be found [here](#)), to help countries implement BO disclosures and be able to do so in a staged manner. In connection to this, the International Secretariat has also developed two beneficial ownership model declaration forms (available [here](#)) which implementing countries can consider using to gather the necessary data from companies for effective BO disclosures.

### Requirement 2.5 in Action

Through the EITI Standard, 55 countries have committed to publicly identifying individuals holding ownership in oil, gas and/or mining projects. Since 1 January 2020, when requirement 2.5 became obligatory, the countries have committed to publish the BO information of all the companies that operate in their extractive sector – whether material or not.

The EITI has been able to deliver practical results through the inclusion of beneficial ownership information in licensing and company registration processes as well as through EITI reporting. More than 31 EITI countries publish some information on beneficial owners of oil, gas and mining companies.

## Opening Extractives

*Opening Extractives* is an ambitious global programme aiming to end the use of anonymous companies linked to corruption and mismanagement in the extractive sector. Closing this channel for corruption can boost the ability of the sector to contribute to development.

*Opening Extractives* will be implemented jointly between the Extractive Industries Transparency Initiative (EITI) International Secretariat and Open Ownership (OO). The programme will provide sustained, multi-year support to 8-10 partner countries on reforms to disclose the ownership of extractives companies, catalysing the use of this data to support better governance.

Working in partnership with a group of 8-10 countries, the programme seeks to mobilise political and stakeholder commitment required to publish and use complex data with the technical capability required.

By end 2025, the programme aims to deliver clear improvements to domestic resource mobilization from the extractives sector in up to ten countries across the globe. It targets three key outcomes:

- Ensure government, industry, and civil society actors have greater access to comprehensive and reliable information on the ultimate owners of extractive industry companies.
- Enable government, industry, and civil society actors to more easily identify and address corruption and mismanagement risks related to hidden ownership.
- Advance beneficial ownership transparency in the extractive industries and beyond in a post-COVID-19 context by documenting and communicating the impact and outcomes of the programme.

Findings and evidence from the programme will be communicated globally, leveraging the tools and knowledge developed to drive impact beyond the focus countries.

## BO transparency in LAC today

The **regulation of BO in the LAC region is uneven** and, as an [IDB study](#) has signalled, its implementation still has room for improvement. The existing regulatory framework in the LAC countries is very much focused around the issues of money laundering and fiscal evasion (stemming from the [Financial Action Task Force – FATF](#), and the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#)), and has not addressed particularly the extractive sector, neither the public access to the BO data, as required by the EITI Standard.

Most of the countries have already established **definitions of BO**, including in some cases thresholds and other elements referenced in the 2.5 requirement. Nonetheless, in many jurisdictions the definitions presented in the regulatory framework, have not necessarily been expressly adopted by the EITI' s MSG. This can create a problem, particularly in those countries where there is a variety of BO definitions, and hence the MSG decision on a concept of BO represents a necessary clarification to establish the scope of the Standard's implementation on the matter.

Making the BO data **publicly accessible** remains one of the biggest challenges in the region, and so far, only one EITI member country, Trinidad & Tobago, has been able to make this information public through an [online register](#). In most cases the BO data is already collected (and held), either by the financial intelligence unit (FIU) or the tax agency in the country. The problem with this

approach is that it tends to frame the data under fiscal secrecy or other type of protection, preventing the EITI National Secretariat and MSG from accessing it and disclosing it in line with the Standard. Some countries have tried a “partial” solution to this problem, which has been asking the companies themselves to disclose either their stock market listings, if applicable, or if not to provide the corresponding information on their BOs. This has been done for example in [the first Argentine EITI Report](#): where the MSG attached a BO disclosure form to reporting templates handed out to the companies, asking them to disclose the corresponding BO data. Nonetheless, since this was done through a “voluntary” approach, in practice this meant that there were only a limited number of BOs being disclosed.

Relying on **self-disclosure** also brings about another difficulty in terms of BO data: it makes it very hard for local EITIs to verify the information. If the MSG, EITI National Secretariat or the Independent Administrator cannot access the datasets held by the other government agencies on BO, then it has to rely solely on the information being submitted by the companies without a possibility of verifying its accuracy.

The “**silo approach**” existent towards BO transparency in the region, has prevented any of the LAC countries from trying to connect requirement 2.5 with licensing system in their extractive sector. Looking forward, countries could consider requesting BO information as part of the data needed from the companies who want to take part in the bidding/awarding processes for mining or oil & gas contracts, licenses, or permits.

Finally, there are two examples related to BO transparency through EITI in the LAC region which are worth exploring:

- **The TT-EITI Beneficial Ownership Register:** In 2015, the Trinidad and Tobago EITI Steering Committee “unanimously agreed to implement a TTEITI Beneficial Ownership Project”, and ever since the country started gathering beneficial ownership data to populate their Registry.

Launched in 2020, the [TT-EITI BO Register](#) is a free, public repository of key information on oil, gas and mining companies operating in the country, which voluntarily report to the TTEITI their BO data. In doing so, they are “leading by example” to meet the new legal requirements related beneficial ownership as established in the Companies (Amendment) Act of 2019. The register includes information like the names of the natural persons, their registered addresses, the corresponding official company tax ID (official Board of Inland Revenue company number), as well as the names of any politically exposed persons associated with the companies.

- **Joining the dots in Colombia: this is a project developed in collaboration with** Directorio Legislativo, as part of the [2020 IMF challenge](#), which aims at identifying corruption risks related to politically exposed persons (PEPs). The system designed was originally intended to combined BO data with other information to cross-check for potential red flags that signal risks of corruption in the extractive sector.

Nonetheless, since the pilot has been implemented in Colombia, where there is no public access to BO data, cross-checks were conducting using proxy data such as publicly available contracts and financial disclosures from public officials. The pilot has provided encouraging results, flagging 19 cases of potential conflicts of interest from the small sample of 900 public officials within the pilot. Now, the team is working on the full implementation of the system in Colombia, which will be rolled out in 2021. This will include our entire database of 9000 public officials and will allow for unlocking the system’s potential as a good

governance tool for identifying corruption risks, and to later be replicated in countries where the BO data is published.

## Speakers

Dr. Santiago Nieto. Head of the Financial Intelligence Unit. Mexico

Dr. Roberto de Michele. Modernization of the State Principal Specialist. Interamerican Development Bank

Noel Alonso Murray. Executive Director. Directorio Legislativo, Argentina

Moderator: Catherine Greene, Country and policy officer. EITI International Secretariat.

## Format and capacity

The session will be a panel discussion with discussion guides provided by the moderator.

- 5': Introduction by the moderator.
- Max. 25': Each panellist will have ten minutes to address two or three specific questions agreed in advance with the moderator, "Davos-panel" style.
- Max. 30': The moderator will then invite "commentators" who will share some questions on the topic.
- Max 15': The moderator will take some questions from the audience in the chat assigned for that matter.

Interpretation in English and Spanish will be provided.

## Annex 1 - Snapshot of Requirement 2.5 implementation in LAC

Country	EITI Report	Road map/Work Plan	Other documents
<b>Argentina</b>	Argentina published its first EITI Report in 2020; it includes information on Beneficial Ownership (see <a href="#">2018 EITI Report</a> , p. 107)	Argentina published its <a href="#">BO Roadmap</a> in February 2019.	All companies registered in the City of Buenos Aires (jurisdiction which hosts most of the registrations) are mandated to submit an <a href="#">annual affidavit</a> to declaring the identity of their BOs. The MSG is currently working on updating their BO roadmap (see <a href="#">here</a> ).
<b>Colombia</b>	Colombia has published information on Beneficial Ownership in its most recent EITI Report (see <a href="#">2019 EITI Report</a> , pp. 162-165).	Colombia published its <a href="#">BO Roadmap</a> in December, 2016.	EITI Colombia portal has a special section on BO (see <a href="#">here</a> ). Currently there is a <a href="#">proposed bill to Congress</a> for the creation of a national BO registry (for all companies), based on the BO definition established in the <a href="#">Tax Code</a> .
<b>Dominican Republic</b>	The Dominican Republic has published information on Beneficial Ownership in its most recent EITI Report ( <a href="#">2019 EITI report</a> , p. 27-29)	The Dominican Republic published its <a href="#">BO roadmap</a> in 2016.	EITI RD portal has a special section on BO (see <a href="#">here</a> )
<b>Ecuador</b>	Ecuador is the most recent EITI member. It has added BO disclosure as part of its current work plan.	The 2020-2022 work plan includes activities towards the disclosure of beneficial ownership within the objective 1.2 from <a href="#">Work Plan 2020-2022</a>	Ecuador published a scoping study before presenting its EITI candidature. It includes a description of the different measures Ecuador most take to disclose BO information (see <a href="#">scoping study</a> )
<b>Guatemala</b>	In its most recent <a href="#">Annual Progress Report 2017</a> , Guatemala acknowledged that after publishing their BO roadmap, there has not been major progress on its public disclosure.	Guatemala published its BO <a href="#">roadmap</a> in 2017. The <a href="#">2018-2019 work plan</a> references to the implementation of the roadmap as one of its objective.	
<b>Guyana</b>	Guyana included information on BO disclosure in its most recent Report ( <a href="#">2017 EITI Report</a> , pp.83-86 and 129)	BO disclosure is included as an objective in Guyana's <a href="#">2020 Work Plan</a> (Objective 5.0)	GYEITI website includes a <a href="#">section</a> on BO
<b>Honduras</b>	Honduras published information regarding BO ownership in its most	Honduras published its BO <a href="#">roadmap</a> in 2016.	

	recent EITI report ( <a href="#">2017-2018 EITI Report</a> , pp. 76-77).		
<b>Mexico</b>	Mexico’s most recent EITI Report includes information on Beneficial Ownership and the legal changes required ( <a href="#">2018 EITI Report</a> , pp. 100-102)	Mexico published <a href="#">its BO Roadmap</a> in 2017.	The legal framework to combat money laundering in Mexico, is currently under discussion.
<b>Peru</b>	Peru’s most recent EITI Report includes information on Beneficial Ownership ( <a href="#">2015-2016 EITI Report</a> , pp. 148-149)	The most recent <a href="#">work plan</a> includes BO disclosure activities. Peru has also published its <a href="#">BO roadmap</a> in 2017.	Since 2019 the Peruvian tax office (SUNAT) is mandated to collect BO data from all tax payers (see <a href="#">here</a> )
<b>Suriname</b>	Suriname’s most recent EITI Report includes information on Beneficial Ownership ( <a href="#">2017 EITI Report</a> , pp. 6-7)	Suriname published its <a href="#">BO Roadmap</a> in 2017.	
<b>Trinidad and Tobago</b>	Trinidad and Tobago’s most recent EITI Report includes information on Beneficial Ownership ( <a href="#">2017 EITI Report</a> , pp.94-97), as well as their portal with the online register.	Trinidad and Tobago published its <a href="#">BO Roadmap</a> in 2016.	TT-EITI Beneficial Ownership Registry online is available <a href="#">here</a> .

## Annex II - Other resources and references:

### General references:

- A. Knobel, “Regulation of Beneficial Ownership in Latin America and the Caribbean”, IDB Technical Note: 1341 (2017). Available at: <https://publications.iadb.org/en/regulation-beneficial-ownership-latin-america-and-caribbean>
- A. Knobel, “Beneficial ownership definitions: determining “control” unrelated to ownership”, Tax Justice Network (2020). Available at: <https://www.taxjustice.net/2020/07/23/beneficial-ownership-definitions-determining-control-unrelated-to-ownership/>
- A. M. Nunenmann and O. Pineda, “Beneficiarios Reales en México”, Proyecto sobre Organización, Desarrollo, Educación e Investigación – PODER (2018). Available at: <https://poderlatam.org/wp-content/uploads/2018/06/beneficiariosrealesPODER.pdf>
- A. Puertas Velasco, “Divulgación de información sobre beneficiarios reales”, Mesa de la Sociedad Civil para la Transparencia de las Industrias Extractivas (2016). Available at: <http://www.mesatransparenciaextractivas.org/Portals/0/Publicaciones/Informaci%C3%B3n%20Beneficiarios%20Reales.pdf?ver=2018-02-02-104110-017>
- C. Votava, J. Hauch and F. Clementucci, “License to Drill: A Manual on Integrity Due Diligence for Licensing in Extractive Sectors”, World Bank Publications (2018). Available at: <https://eiti.org/document/license-to-drill>



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- EITI, “Legal approaches to beneficial ownership transparency in EITI countries” (2019). Available at: <https://eiti.org/document/legal-approaches-to-beneficial-ownership-transparency-in-eiti-countries>
- EITI & Open Ownership, “Catalysing transformative change in beneficial ownership transparency” (2020). Available at: <https://www.openownership.org/uploads/Opening%20Extractives%20Research%20Report.pdf>
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- GAFILAT, “Informe de prácticas y desafíos de los países de América Latina sobre los mecanismos de acopio de información básica y de beneficiarios finales” (2020). Available at: <https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/estudios-estrategicos-17/3992-informe-de-practicas-y-desafios-de-los-paises-de-america-latina-sobre-los-mecanismos-de-acopio-de-informacion-basica-y-de-beneficiarios-finales/file>
- Global Forum on Transparency and Exchange of Information for Tax Purposes – OECD and the Inter-American Development Bank\*and Inter-American Development Bank: “A Beneficial Ownership Implementation Toolkit” (2019). Available at: <http://www.oecd.org/tax/transparency/documents/beneficial-ownership-toolkit.pdf>
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*BO regulation in EITI implementing countries (LAC):*

- **Argentina** - Inspección General de Justicia (IGJ): “Declaraciones Juradas y Notariales: Beneficiario Final”. Available at: <https://www.argentina.gob.ar/justicia/igi/ddij/beneficiariofinal#:~:text=Se%20entiende%20como%20beneficiario%20final,510%20inc>
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- **Dominican Republic** – Dirección General de Impuestos Internos: “Beneficiario Final Prevención de Lavado de Activos y Financiamiento del Terrorismo: Debida Diligencia de Clientes”. Available at: <https://dgi.gov.do/legislacion/prevencionLavado/beneficiarioFinal/Paginas/default.aspx>
- **Ecuador** – Superintendencia de Compañías, Valores y Seguros: “Normas de prevención de lavado de activos, financiamiento del terrorismo y otros delitos” (2019). Available at: [https://www.gob.ec/sites/default/files/regulations/2020-03/Documento\\_NORMAS-PREVENIC%C3%93N-LAVADO-ACTIVOS.pdf](https://www.gob.ec/sites/default/files/regulations/2020-03/Documento_NORMAS-PREVENIC%C3%93N-LAVADO-ACTIVOS.pdf)
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- **Honduras** – Código de Comercio. Norma 73-50 (Art. 389). Available at: <https://honduras.eregulations.org/media/codigo%20del%20comercio.pdf>
- **Mexico** - Ley federal para la prevención e identificación de operaciones con recursos de procedencia ilícita. Available at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI\\_090318.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_090318.pdf)
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