

Assessing progress in meeting Requirement 2.5 on beneficial ownership

This paper outlines a framework how to assess progress in meeting the beneficial ownership requirement (2.5) in Validation. The framework seeks to ensure that implementing countries have adequate guidance in preparation for the approaching 1 January 2020 deadline. The framework consists of a technical assessment of meeting the requirements' components, and an assessment of effectiveness.

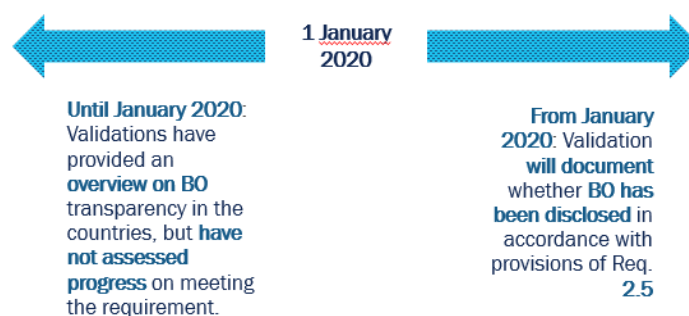
In the first stage (until 31 December 2021), Validation will consider a set of initial criteria that would qualify for an assessment of 'satisfactory progress' in meeting the requirement. This gradual approach aims at recognising the challenges with systematically disclosing beneficial ownership information and the efforts made by countries to develop supportive legal and institutional frameworks. As such, the gradual approach will allow for countries to account for the progress made and identify the next steps needed to disclose beneficial owners in their jurisdictions.

The timing of the assessment of Requirement 2.5 will follow the agreed Validation schedule with adjustments to ensure all countries undergo the assessment within a reasonable timeframe.

EITI Requirement 2.5

In 2016, the EITI Standard introduced a gradual approach to beneficial ownership disclosures. It set out that multi-stakeholder groups (MSGs) were required to adopt beneficial ownership roadmaps by 1 January 2017. Disclosure of beneficial owners is expected as of 1 January 2020.

Figure 1. Timeline for assessment of Requirement 2.5



Box 1 – Requirement 2.5 of the 2019 Standard

2.5 Beneficial ownership

a) It is recommended that implementing countries maintain a publicly available register of the beneficial owners 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. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.

b) Implementing countries are required to document the government's policy and multi-stakeholder groups discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.

c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information. This applies to corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any significant gaps or weaknesses in reporting on beneficial ownership information must be disclosed, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with Article 1 of the EITI Board's procedures for oversight of EITI implementation.

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

e) The multi-stakeholder group should assess any existing mechanisms for assuring the reliability of beneficial ownership information and agree an approach for corporate entities within the scope of 2.5(c) to assure the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.

f) Definition of beneficial ownership:

i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.

ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they

are listed.

iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.

g) Implementing countries and multi-stakeholder groups should also address disclosure of legal owners and share of ownership.

Assessing progress on beneficial ownership disclosures

i. Progress in meeting the requirement and implications for overall assessment

The framework for validating Requirement 2.5 consists of a technical assessment against the requirement and an assessment of effectiveness. Validation will make a technical assessment against the requirement, i.e., to what extent the implementing country has addressed each aspect of Requirement 2.5. In addition, Validation will consider the effectiveness of disclosures, i.e., to what extent disclosures are contributing to the overall objective of Requirement 2.5. The approach recognises that (a) the Validation of the requirement requires a clear, objective framework, and (b) the objective of the requirement is to ensure disclosures that effectively discourage or reveal misconduct and conflicts of interest and strengthen a transparent business environment.

a. Technical assessment against the requirement

The technical assessment will consider each aspect of the requirement. In the initial phase between 1 January 2020 and 31 December 2021, Validation will focus on a narrower subset of questions. This will allow countries to benefit from recommendations that arise from Validation and further improve disclosures before the requirement is reassessed. It will also set concrete expectations and establish a clear framework for assessment. In this first phase, progress will be assessed as satisfactory if the initial criteria are met. Countries will receive feedback on the gaps between their current level of implementation and full implementation.

As of 1 January 2022, Validation will expect that all aspects of the requirement are met. The table below outlines the questions to be considered by the Validator in the first and second phases. While Validations in the first phase would concentrate on a limited set of questions that form the initial criteria to be assessed as 'satisfactory progress', further progress would be documented, where applicable.

Table 1. Technical assessment of Requirement 2.5 in phases 1 and 2.

Elements of Requirement 2.5	Phase 1: Questions for the Validator to consider until 31 December 2021 (initial criteria to be assessed as 'satisfactory progress')	Phase 2: Questions for the Validator to consider as of 1 January 2022
<i>Public register of beneficial owners (recommended) (2.5.a).</i>	<i>Are there laws, regulations or policies in place to back establishing and maintaining a public register of beneficial owners, including those of corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production oil, gas or mining license or contract ?</i>	<i>Does a public register of beneficial owners of the corporate entity(ies) that apply for, operate or hold a participating interest in an exploration or production oil, gas or mining license or contract exist? Does it include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted? Is the information incorporated in existing filings?</i>
Documenting the government's policy and MSG's discussions (2.5.b).	Is the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership documented, including details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway?	
Implementing countries required to request, and companies disclose, beneficial ownership information (2.5.c).	<p>Has the implementing country requested beneficial ownership information to be publicly disclosed by corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract? <i>Does the legal framework back the request?</i></p> <p>Have any corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract disclosed the information?</p> <p>Does the requested information include the identity(ies) of their beneficial owner(s), the level of ownership and details</p>	<p>Have all corporate entity(ies) that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract disclosed the information?</p> <p>Does the disclosed information include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted?</p>

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<p>Disclosing gaps and weaknesses (2.5.c)</p>	<p>Has the MSG assessed gaps or weaknesses in disclosure of beneficial ownership information, including an assessment of the materiality of omissions and the reliability of beneficial information?</p> <p>Has the government or MSG agreed and documented plans to overcome the identified challenges?</p>	<p>Has the MSG assessed and documented gaps or weaknesses in disclosure of beneficial ownership information, including an assessment of the materiality of omissions and the reliability of beneficial information?</p> <p>Have entities that failed to disclose all or parts of the beneficial ownership information been named?</p> <p>Has the government or MSG documented efforts to address these and to strengthen the reporting and disclosure systems?</p>
<p>Required information about the identity of the beneficial owner: Nationality, country of residence, politically exposed persons (2.5.d).</p> <p><i>Recommended: National identity number, date of birth, address and means of contact (2.5.d).</i></p>	<p>Does the requested information include details of the identity of the beneficial owner(s), including nationality, country of residence, and identification of politically exposed persons?</p>	<p>Does the disclosed information about the identity of the beneficial owner(s) include the name of the beneficial owner, the nationality, and the country of residence?</p> <p>Are political exposed persons identified?</p> <p><i>Is the national identity number, date of birth, residential or service address, and means of contact disclosed?</i></p>
<p>Assurances on the accuracy of information (2.5.e)</p>	<p>Has the relevant government entity or the MSG established an approach for participating companies to assure the accuracy of the beneficial ownership information they provide?</p>	<p>Have companies complied with the assurances established by the relevant government entity or the MSG?</p>

<p>MSG should agree a definition of beneficial owner (2.5.f.ii), including ownership thresholds and reporting obligations for PEPs.</p>	<p>Has the MSG agreed an appropriate definition of the term beneficial owner?</p> <p>Is the definition aligned with Requirement 2.5.f.i and does it take international norms and relevant national laws into account?</p> <p>Does it include ownership threshold(s) and specify reporting obligations for politically exposed persons?</p> <p>Is the definition included in the EITI Report or does the report include a reference or link to another public source (e.g. a law) that includes the definition?</p>	
<p>For publicly listed companies, name of stock exchange and link to stock exchange filings (2.5.f.iii).</p>	<p>For publicly listed companies, including wholly-owned subsidiaries, has the name of the stock exchange been disclosed and a link included to the stock exchange filings where they are listed, either in the public register or in the EITI Report?</p>	<p><i>Has the MSG considered how rigorous are requirements in the stock exchanges referred to and what ownership information is available from the stock exchange filings of the companies within the scope of the disclosures?</i></p>
<p>Beneficial ownership information of joint venture partners (2.5.f.iv).</p>		<p>In the case of joint ventures, is the beneficial owner(s) of each entity within the venture disclosed, unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company? Has each entity provided assurances, if requested by the MSG or Independent Administrator?</p>
<p>EITI Report should disclose legal owners and share of ownership (2.5.g).</p>	<p>Is information about legal owners and share of ownership of such companies publicly available?</p>	

b. Assessment of effectiveness

The assessment of the effectiveness of beneficial ownership disclosures will draw on findings from the technical assessment, Financial Action Task Force (FATF) mutual evaluations, documentation of work by the MSG and stakeholder consultations to establish an overview of whether implementation is addressing the overall objective of Requirement 2.5. Especially in the first phase, the direction of travel will also be reflected in the assessment.

The nature of Requirement 2.5 differs somewhat from other EITI Requirements. Firstly, obtaining complete beneficial ownership information from every company may in practice not be feasible in all countries. Secondly, the comprehensiveness of information is an imperfect measurement of the effectiveness of disclosures. Ensuring reliable data from high-risk companies, such as companies owned by politically-exposed persons, is central for meeting the objective of the requirement.

The MSG's assessment of reasons behind gaps and weaknesses in data plays a key role in ensuring effective disclosures and addressing shortcomings. The assessment of effectiveness will aim at helping the Validator and the Board to determine whether possible omissions should affect the level of progress in the second phase and to provide the implementing country with meaningful recommendations.

In assessing the materiality of omissions, the Validator will consider whether the MSG has demonstrated that full beneficial ownership information is publicly available for companies which make material payments to the government, hold significant concessions or have been recently awarded licenses. The Validator will also consider any concerns raised by stakeholders about omissions or suspicions that politically exposed persons are involved in a company that has not disclosed information.

Validation will thus seek to identify whether the implementing country has undertaken sufficient measures to ensure that beneficial owners of high-risk companies are disclosed and whether these companies have complied with disclosure requirements. This risk-based approach will help MSGs and the Validator target the most relevant omissions. The assessment will also consider whether the ownership thresholds for disclosing beneficial owners are appropriate and provide recommendations.

The assessment will document strengths and weaknesses in data reliability and the agreed assurances. Experts consulted by the International Secretariat stressed the importance of independent verification of beneficial ownership information. Assurances provided solely by the companies themselves have weaknesses as some may have incentives to hold back information. The assessment would also look at whether data is disclosed in an accessible and usable format.

c. Outcome of Validation

The assessment of Requirement 2.5 will have a similar effect on the overall level of progress as



any other requirement. In practice, an assessment below satisfactory progress in implementing Requirement 2.5 will prevent an overall assessment of satisfactory progress.

Figure 2. Timeline for phases 1 and 2.

However, in the first phase, implementing the initial criteria will lead to progress being assessed as satisfactory. The table below outlines the expectations to achieve the various levels of progress in phases 1 and 2.

Table 2. Levels of progress in phases 1 and 2.

Level of progress	Phase 1 (1 Jan 2020 – 31 Dec 2021)	Phase 2 (as of 1 Jan 2022)
Outstanding progress	Not applicable.	Implementation exceeds the required aspects of the requirement, and the assessment demonstrates disclosures are effective and systematic.
Satisfactory progress	Initial criteria are fully met (see table 1), with a demonstrated focus on ensuring effective disclosures.	All aspects of the requirement are fully met. Possible omissions have been considered by the MSG and are not material.
Meaningful progress	Significant elements of the initial criteria are met, and some efforts have been undertaken to promote effective disclosures.	Significant elements of the requirement are being implemented and the implementing country has made efforts to ensure effective disclosures.
Inadequate progress	Significant elements of the initial criteria are unmet.	Significant aspects of the requirement are unmet, and effective disclosures are not taking place.
No progress	No progress in implementing the initial criteria.	No progress in implementing the requirement.

Importantly, Validation will seek to provide strategic direction to the implementing country on improving the comprehensiveness, reliability and effectiveness of beneficial ownership disclosures. Recommendations will draw on both gaps identified in the technical assessment and opportunities arising from the assessment of effectiveness.

ii. Timing of assessing progress

Requirement 2.5 will be assessed in Validations commencing as of 1 January 2020. Implementing countries will be validated on Requirement 2.5 according to the existing Validation schedule. As with other requirements, the assessment would consider progress made by the date of commencement of the Validation.

The following 12 Validations are currently scheduled to take place in 2020:

Ghana	27 February 2020 (third Validation)
Mauritania	27 February 2020 (third Validation)
Seychelles	1 April 2020 (second Validation)
Mexico	25 April 2020
Guyana	25 April 2020
Papua New Guinea	30 April 2020 (second Validation)
Guinea	27 August 2020 (second Validation)
Ethiopia	27 August 2020 (second Validation)
Malawi	27 August 2020 (second Validation)
Trinidad and Tobago	27 August 2020 (second Validation)
Philippines	5 October 2020 (re-Validation)
Chad	8 November 2020 (second Validation)

Following the agreed Validation schedule entails that some countries may be able to attain satisfactory overall progress in meeting the Standard until year 2023 without having been assessed on Requirement 2.5. Therefore, countries which achieve overall satisfactory progress in a Validation commenced or concluded in 2019 will be re-validated on Requirement 2.5 on 1 January 2021. These narrower assessments will have similar deadlines for corrective actions within a timeframe of 3-18 months in line with Article 4 in the Section on EITI Board oversight of EITI implementation in the 2019 Standard. The result will affect the overall assessment of progress, which could change if progress on Requirement 2.5 is below satisfactory.

Using assessment of progress to measure and support effective implementation

So far, Validation has been a useful tool for identifying gaps and providing recommendations for strengthening implementation. Given the challenges and limited progress in implementing the beneficial ownership roadmaps to date, it is likely the assessments of progress on Requirement 2.5 will be crucial for taking stock of progress and identifying the next steps needed to disclose beneficial owners.

The International Secretariat will also be developing guidance on legal approaches to beneficial ownership, including definitions and thresholds, based on emerging best practices and specific challenges related to ownership transparency in the oil, gas and mining sector. Implementing countries and MSGs are encouraged to self-assess their progress with support and input from the International Secretariat where needed.